United States Court of Appeals for the Second Circuit



APPENDIX

74-2588

In The

United States Court of Appeals

For The

SECOND CIRCUIT

~~

No. 74-2588

S

BERRY PETROLEUM COMPANY, an Arkansas Corp. (Dissolved); J. E. O'DANIEL; YVONNE LAW; McALESTER FUEL COMPANY and GERLAND P. PATTEN & Co., INC.,

Plaintiffs-Appellants,

v.

ADAMS & PECK; ALLEN & COMPANY, INCORPORATED;
AMERICAN STOCK EXCHANGE; ARTHUR YOUNG & COMPANY
A. BRUCE ROZET; OLIVER A. UNGER; IRVING GOLDSTEIN;
SIDNEY KIBRICK; RICHARD A. SARAZAN; RODNEY W. LOEB;
ARNE KALM; H. IGOR ANSOFF; GOTTFRIED VON MEYERN
HOHENBERG; HOWARD D. MARTIN; PETER GETTINGER;
KLEINER, BELL & CO., KLEINER, BELL & CO., INC.; BURT
KLEINER; LIONEL BELL; RALPH SHAPIRO; THEODORE SAYERS;
PETER HUANG; BENJAMIN F. BRESLAUER; SOL STAMESHKIN
BRYCE CRIDER; ELY A. LANDAU; JAMES A. LEWIS ENGINEERING,
a Division of UNIVERSITY COMPUTING CORPORATION; and
VARIETY INC.,

Defendants-Appellees.

JOINT APPENDIX

P. B. Konrad Knake
White & Case
14 Wall Street
New York, New York 10005
Aitorneys for Appellee
Arthur Young & Company

ROBERT B. BLOCK
POMERANTZ LEVY HAUDEK
& BLOCK
295 Madison Avenue
New York, New York 10017
Attorneys for Appellers

Attorneys for Appellees Kleimer Bell Group

FRANK P. BROZ
HOLTZMANN, WISE & SHEPARD
30 Broad Street
New York, New York 10004
Attorneys for Appellee

Allen & Company Incorporated

STEPHEN PHILBIN
LOCKE, PURNELL, BOREN,
LANEY & NEELY
3600 Republic Nat'l Bank Tower
Dallas, Texas 75201
and
OLIVER M. CLEGG
KEITH, CLEGG & ECKERT

Keith, Clegg & Eckert
Drawer A
Magnolia, Arkansas 71753
and
EDWARD LESTER

LESTER AND SHULTS
Tower Building
Little Rock, Arkansas 72201
Attorneys for Appellants,
Berry Petroleum Company, an Arkansas Corporation (Dissolved);
J. E. O'Daniel; Yvonne Law; McAlester Fuel Company; and Gerland P. Patten & Co., Inc.

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	TABLE OF CONTENTS	Page
I.	Appellants' Rule 30 (b) Designation of Contents of Appendix and Statement of Issues on Appeal (Filed December 14, 1974). Plaintiffs' Complaint (Filed December 15, 1972).	1
	Docket Entries made in the United States District Court, Northern District of Texas, in the matter entitled Berry Petro- leum Co., et al, plaintiffs v. Adams & Peck, et al, defendants, 73 Civ. 3452.	3
	Original Answer of Defendant Arthur Young & Company (Filed February 26, 1973).	25
	Plaintiffs' Motion for Remand for Trial or Alternatively for a Rule 16 Pretrial Conference (Filed September 14, 1973)	32
	Notice of Motion, Motion and Affidavit for Order Declaring Action may not be maintained as a Class Action and for Dismissal of Complaint by Defendants Kleiner Bell (Group, Arthur Young & Company, and Allen & Company, Inc. Filed November 9, 1973).	34
	Affidavit of Adams & Peck in Support of Memorandum of Allen & Company, Inc., Arthur Young & Company and Kleiner Bell Group (Filed November 9, 1973).	36
	Plaintiffs' Response to Motion of Allen & Company, et al. for Order Declaring this Action not to be a Class Action and for Judgment Dismissing the Complaint with attached Exhibits "A" through "D". (Limited to captions of Plaintiffs' Response, but including complete Exhibits "A" through "D"). (Filed November 14, 1973).	41
	Order granting Summary Judgment for Defendants The Kleiner Bell Group, Arthur Young & Company and Allen & Company, Inc., and dismissing other Defendants (Filed August 19, 1974).	57
	Memorandum Opinion in Support of Order granting Summary Judgment and dismissing other Defendants (Filed August 19, 1971).	58
II	Designation by Appellee Arthur Young & Company of Parts of Record not Designated by Appellant to be Included in Appendix. (Filed December 24, 1974).	68
	Docket Entries made in the United States District Court, Southern District of New York, in the matter entitled In Re Seeburg-Commonwealth United Litigation, Docket No.	70

Table of Contents — (Continued)

		Page
	Docket Entries made in the United States District Court, Southern District of New York, in the matter entitled Sherlee Land, Robert R. Jennings, et al., plaintiffs v. Commonwea'th United Corporation, et al., defendants, 69 Civ. 3726 Consolidated Second Amended Complaint as conformed to Second Pre-Trial Conference Order of May 24, 1971, filed June 16, 1971, in the Land-Jennings action.	102
	The February 2, 1972 class action Order in the Land-Jennings action.	148
	Notice to Present and Former Holders of Securities Issued by Commonwealth United Corporation, Ordered under date February 2, 1972.	150
	Stipulation of Settlement, dated May 26, 1972, and filed August 25, 1972, in the Land-Jennings action.	152
	Final Order and Judgment filed December 18, 1972 in the Land-Jennings action.	172
	Stipulation of Settlement with Arthur Young & Company, filed August 16, 1973 in the Land-Jennings action.	176
	Final Judgment filed December 4, 1973 in the Land-Jennings action.	193
	Commonwealth's Exhibit 2 to the hearing of August 1-4, 1972 in the Land-Jennings action.	196
П.	CROSS-DESIGNATION OF PARTS OF RECORD FOR INCLUSION IN APPENDIX BY APPELLEES KLEINER BELL GROUP (FRAP 30(b)). (Filed January 8, 1975).	220
	Stipulation of Concurrence in Stipulation of Settlement, of Kleiner Bell Group of defendents (viz., Kleiner Bell & Co., Kleiner Bell & Co., Inc., Burt Kleiner, Lionel Bell, Ralph J. Shapiro, Martin S. Shapiro, Richard A. Freling, 140 Associates) dated May 26, 1972, in the Land-Jennings action.	223
	Final order and judgment dismissing as against Kleiner Bell Group of defendants, filed November 29, 1972 in the Land-Jennings action.	227
IV.	CROSS-DESIGNATION OF PARTS OF RECORD FOR INCLUSION IN APPENDIX BY APPELLEE ALLEN & COMPANY INCORPORATED (Filed January 9, 1975).	231

Table of Contents — (Continued)	iii Page
Summons and Complaint in an action in the United States District Court for the Eastern District of Missouri, Eastern Division, entitled: "Malcolm L. Strauss, Plaintiff v. Commonwealth United Corporation, Kleiner, Bell & Co., Incorporated, Burt Kleiner, Allen & Company Incorporated, Theodore R. Sayers, A. Bruce Rozert, Oliver A. Unger, Irving Goldstein, Peter Gettinger, H. Igor Ansoff, N. Clarkson Earl, Jr., Peter Huang and Gottfried Von Meyern-Hohenberg, Defendants "(hereinafter referred to as "Strauss v. Common-	
wealth").	. 233
Conditional Transfer Order of the Judicial Panel on Multi- District Litigation filed February 14, 1970 transferring Strauss v. Commonwealth to the Southern District of New York for pre-trial proceedings with Seeburg-Commonwealth Merger Litigation.	. 239
Deposition of Frank P. Broz with Exhibit A (Docket Sheet)	240
Stipulation of Dismissal of Strauss v. Commonwealth dated April 7, 1972 and Affidavit of Frank P. Broz sworn to May 10, 1972 filed with such Stipulation.	244
Stipulation of Concurrence in Stipulation of Settlement on behalf of Allen & Company Incorporated dated May 26, 1972.	245



IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCU'T

NO. 74-2588

BERRY PETROLEUM COMPANY, an Arkansas Corporation (Dissolved), et al., Plaintiffs-Appellants,

ADAMS & PECK, et al.,

Defendants-Appellees.

APPELLANTS' RULE 30(b) DESIGNATION OF CONTENTS OF APPENDIX AND STATEMENT OF ISSUES ON APPEAL

Plaintiffs-appellants, Berry Petroïeum Company, an Arkansas corporation (dissolved); J. E. O'Daniel; Yvonne Law; McAlester Fuel Company; and Gerland P. Patten & Co., Inc., on their own behalf and on behalf of certain past and present owners of the common capital stock of commonwealth United Corporation similarly situated, designate, pursuant to Rule 30(b), Fed. R. App. Pro., the following parts of the record which appellants intend to include in the appendix in the above-styled case:

- 1. Plaintiffs' Complaint.
- 2. Original Answer of Defendant Arthur Young & Company.
- 3. Plaintiffs' Motion for Remand for Trial or Alternatively for a Rule 16 Pretrial Confe ance.
- 4. Notice of Motion, Motion and Affidavit for Order Declaring Action may not be maintained as a Class Action and for Dismissal of Complaint by Defendants Kleiner Bell Group, Arthur Young & Company, and Allen & Company, Inc.
- 5. Affidavit of Adams & Peck in Support of Memorandum of Allen & Company, Inc., Arthur Young & Company and Kleiner Bell Froup.
- 6. Plaintiffs' Response to Motion of Allen & Company, et al. for Order Declaring this Action not to be a Class Action and for Judgment Dismissing the Complaint with attached Exhibits "A" through "D". (Limited to captions of Plaintiffs' Response, but including complete Exhibits "A" through "D".)
- 7. Order granting Summary Judgment for Defendants The Kleiner Bell Group, Arthur Young & Company and Allen & Company, Inc., and dismissing other Defendants.

8. Memorandum Opinion in Support of Order granting Summary Judgment and dismissing other Defendants.

Appellants further state that the issues it intends to present on appeal are as follows:

1. The District Court erred in granting the motion of American Stock Exchange to dismiss, granting summary judgment for defendants The Kleiner Bell Group, Arthur Young & Company and Allen & Company, Inc., and dismissing the action as to the remaining defendants.

This designation of the parts of the record which appellants intend to include in the appendix and the statement of the issues which appellants intend to present for review is made pursuant to Rule 30(b), Fed. R. App. Pro.

DATED: December 12, 1974.

Respectfully submitted,

/s/ Stephen Philbin

Shephen Philbin

LOCKE, PURNELL, BOREN, LANEY & NEELY 3600 Republic Bank Tower Dallas, Texas 75201 214/744-4511

and

Edward Lester LESTER AND SHULTS Tower Building Little Rock, Arkansas 72201

and

Oliver M. Clegg KEITH, CLEGG & ECKERT Drawer A Magnolia, Arkansas 71753

CIVIL DOCKET

UNITED STATES DISTRICT COURT

C. Form No. 106 Rev.

Jury demand date: 12-15-72 Ptf. Jury demand by Deft. Howard

15-1

TITLE OF CASE For plaintiff: BERRY PETROLEUM COMPANY, an Arkansas Stephen Philbin Corporation (Dissolved); Locke, Purnell, Boren, Laney & Ne I. E. O'DANIEL; 3600 Republic Bank Tower_ Dallas Texas 75201 744-4511 CALESTER FUEL COMPANY; and GERLAND P. PATTEN & CO., INC. Keith, Clegg & Eckert ys, P. O. Drawer A Magnolia, Arkansas ADAMS & PECK; INCORPORATED; ALLEN & COMPANY, INCORPO AMERICAN STOCK EXCHANGE; Lester and Shults 1330 Tower Building ARTHUR YOUNG & COMPANY; Little Rock, Arkansas 72201 A. BRUCE ROZET; OLIVER A. UNGER; IRVING GOLDSTEIN; SIDNEY KIBRICK; RICHARD A. SARAZAN; RODNEY W. LOEB; For defendant: ARNE KALM; H. IGOR ANSOFF; ATTORNEYS LISTED ON MEXT PAGE GOTTFRIED von MAYERN HOHENBERG; HOWARD D. MARTIN; PETER GETTINGER;
KLEINER, BELL & CO.; KLEINER, BELL & CO., INC.; BURT KLEINER; LIONEL BELL; RALPH SHAPIRO; THEODORE R. SAYERS; PETER HUANG; BENJAMIN F. BRESLAUER; SOL STAMESHKIN; BRYCE CRIDER; ELY A. IANDAU; # JAMES A. LEWIS ENGINEERING, a Division of UNIVERSITY COMPUTING CORPORATION; . NAME OR DISB. REC. cosrs 1972 RECEIPT NO. 15 00 Clerk 12-19 LPBL&N J.S. 5 mailed 12-31-72 do SF201 C.D.Z 12-19 Marshal J.S. 6 mailed CLASS ACTION - R.23 Alleg. Basis of Action: Securities Exchange Act of 1934 Docket fee 15 U.S.C. 78j(b) Fr aud, Witness fees conspiracy, price mani-Makakakakak pulation, Depositions concealing information and making misleading statements

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DATE	PROCEEDINGS	Date Ore
1972	Filed COMPLAINT including JURY DEMAND and issued SUMMONS (28)	
Dec.15		
Dec. 20	Filed MARSHAL'S RETURN ON SUMMONS executed 12-18-72 by serving Howard D. Martin.	
	The second of th	
	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT executed 12-21-72 by serving James A. Lewis by delivering to L.B. Howell Agent for Servic C. T. Corp.	е
1973 Jan.3	Filed STIPULATION FOR EXTENSION OF TIME TO PLEAD IN RESPONSE TO	130
	COMPLAINT AND ORDER THEREON. (Bell, Kleiner Co & Kleiner Inc. 2-10-73	
	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT unexecuted 12-29-72 as to Rodney W. Loeb.	· ·
Jan 5	Filed MAKSHAL'S RETURN ON SUMMONS & COMPLAINT executed 12-27-72 by	
Jan 3	serving Allen & Company, Inc. by delivering to Frank Brose (Atty for firm).	
Ton 5	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT executed 12-26-72 by	
Jan 5	serving Adams & Peck by delivering to Raymond K. Price - Partner.	
Jan 8	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT executed 12-26-72 by	
Jan o	serving Bryce Crider.	
Jan 8	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT executed 12-29-72 by	
	serving Peter Gettinger by delivering to Daniel Hirsch, Associate.	1
Jan 8	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT executed 1-2-73 by	1
1	serving Ralph Shapiro,	
Jan 8	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT executed 12-26-72 by	ļ
-	serving Benjamin F. Breslauer by delivering to Erma Cabla (live in Housekeeper.	
Jan 8	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT executed 12-26-72 by	
	serving Kleiner, Bell & Co. by delivering to Lionel Bell, auth offi	cer.
Jan 8	Filed MARSHAL'S RETURN ON SUMMONS & COMPLLINT executed 12-26-72 by serving Lionel Bell.	
Yan 0	Filed MARSHAL'S RETURN ON SUMMONS & COMPLAINT executed 12-26-72 by	
Jan 8	serving Sidney Kibrick by delivering to Florence Dalamantes (Hisekee	
Jan 8	Filed MARSHAL's RETURN ON SUMMONS & COMPLAINT executed 12-26-72 by serving Kleiner, Bell & Co. by delivering to Lionel Fell - Partner.	
Jan. 10	Filed ORIGINAL ASNWER OF DEFENDANT JAMES A. LEWIS ENGINEERING. (A Division of University Computing Comapny.)	
Jan. 12		-
Jan. 15	Filed MOTION FOR MORE DEFINITE STATEMENT AND ORIGINAL ANSWER OF DEFENDANT, HOWARD D. MARTIN.	
1	A-4	

Jury

D. C. 110 Rev. Civil Docket Continuation

PATE 1973	PROCEEDINGS
Jan 16	Filed MARSHAL'S RETURNS ON SUMMONS (2) executed 1-8-73 by serving Ely A. Landau by delivering to Edmund R. Rosenkrantz; executed 1-5-73 by serving Variety, Inc. by delivering to S.Y. Silverman.
Jan. 16	Filed SPECIAL APPEARANCE, STIPULATION FOR EXTENSION OF TIME (and Order attached-not signed) (Filed w/order 1-22-73) (Sidney Kibrick)
Jan 18	Filed MARSHAL'S RETURN ON SUMMONS executed 1-11-73 by serving Burt Kleiner by delivering to Irwin I. Goldring, Esq.
Jan 18	Filed MARSHAL'S RETURN ON SUMMONS (8) unexecuted 12-27-72 as to Theodore R. Sayers; as to H. Igor Ansoff; as to Arne Kalm; as to A. Bruce Rozet; as to Irving Goldstein; as to Richard A. Sarazen; as to Oliver A. Unger; as to Sol Stameshkin.
Jan 18	Filed STIPULATION FOR EXTENSION OF TIME FOR SERVICE OF ANSWER OF Deft. Allen & Company, Incorporated.
Jan 22	Filed ORDER pursuant to Stipulation that Defendant Allen & Company Incorporated is granted to and including 2-10-73 to answer Copies mailed to counsel
Jan 22	Filed ORDER pursuant to Stipulation that Defendant Sidney Kibrick is granted to and including 1-29-73 to answer Copies mailed to counsel
Jan 22	Filed STIPULATION and ORDER that Defendant Adams & Peck's time to answer is extended from 1-15-73 to and including 2-10-73
Jan. 23	Filed ANSWER OF DEFENDANT, BRYCE CRIDER.
Jan 23	Filed MARSHAL'S RETURN ON SUMMONS executed 1-11-73 by serving Arthur Young & C o., by del to C. Richards Spriggs (Ptr.)
Jan 24	Filed MARSHAL'S RETURN ON SUMMONS executed 1-19-73 by serving Peter Huang.
Jan 29	Reissued SUMMONS with Original Complaint to H. Igor Ansoff.
Jan 30	Filed SPECIAL APPEARANCE, STIPULATION FOR EXTENSION OF TIME and Order Thereon *
Jan. 31	Filed MARSHAL'S RETURN ON SUMMONS executed (2) 1-23-73 by serving American Stock Exchange, gy del to Mr. Lee, Sect.; executed 1-24-73 by serving Rodney W. Loeb,
Feb 1 *	Filed ORDER approving Stipulation for Extension of Time for deft Kibrick to answe (to and including Feb. 10, 1973) Cys mld to counsel
Feb 5	Filed STIPULATION (that time within which deft Ely A. Landau may answer is extended chrough and including Feb. 10, 1973)
Feb 5	Filed STIPULATION for Extension of Time to Reply in Response to Complaint and ORDER Thereon (Defts Kleiner, Bell & Co., Kleiner, Bell & Co., Inc., Burt Eleiner, Lionel Bell, and Raiph J. Shapiro extension granted to and including Mar. 1, 173 Cys returned to counsel A-5

PATE 1973 Filed MARSHALS RETURN ON SUMMONS unexecuted 1-29-73 as to Gottfried von Meyern Hohenberg - unable to locate Feb 9 Filed ANSWER of Defendant Sidney Kibrick eb 12 Filed Ptf. and Deft. Allen & Company Incorporated's STIPULATION FOR FURTHER EXTENSION OF TIME FOR SERVICE OF ANSWER thru 3-1-73 and ORDER granting (Copies mailed to counsel) eb 12 Filed MOTION OF DEFENDANT ADAMS & PECK FOR MORE DEFINITE STATEMENT eb 12 Filed BRIEF IN SUPPORT OF MOTION OF DEFENDANT ADAMS & PECK FOR MORE DEFINITE STATEMENT eb 12 Filed STIPULATION Extending Time of Deft American Stock Exchange to Move, Answer, or Otherwise Plead w/ORDER granting extension to and including Mar. 1, 1973 Cys returned to counsel Peb 14 Filed agreed STIPULATION FOR EXTENSION OF TIME with attached ORDER that Defendant Arthur Young & Co. have to 3-2-73 to move. (copies given to counsel at counter) Peb 20 Filed STIPULATION of attorneys for extension of time for deft.	WMTJr
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Time of Deft American Stock Exchange to	
Feb 28 Filed SECOND STIPULATION Extending Time of Delt American Second Stipulation Extending Time of Delt American Second Stipulation (to and including March 15, 1973) w/Order approve	WMTJr
Worder or Otherwise Plead (to and Incidentify Indian wy)	ng
Move, Aliswer, or other	
Cys returned to counsel	
TOTAL OF BODNEY II TOFF	
Feu 28 Filed ANSWER OF RODNEY W. LOEB	
Filed agreed STIPHATION that time of Deft Huang to answer Complaint	
Mar 1 Filed agreed STIPULATION that time of Delt. Huang to answer sample is extended to & including March 7, 1973.	-
Mar 1 Filed ANSWER OF DEFENDANTS KLEINER, BELL & CO. KLEINER, BELL &	
Mar 1 Filed ANSWER OF DEFENDANTS RETNER, EELL & CO., INC. BURT KLEINER, LIONEL BELL & RALPH SHAPIRO.	+
	1
Mar I Filed MOTION FOR MORE DEFINITE STATEMENT OF DEFENDANT ELY A. LANDAU	٩
The state of the s	1
Mar 1 Filed BRIEF IN SUPPORT OF MOTION FOR MORE DEFINITE STATEMENT OF	
DEFENDANT ELY A. LANDAU	
Mar 1 Filed ORIGINAL ANSWER of Defendant Allen & Company, Incorporated	
THE TE OPICINAL ANSWER	
Mar 15 Filed DEFENDANT AMERICAN STOCK EXCHANGE, INC.'S MOTION TO DISMISS	
PURSUANT TO RULE 12(b).	
A-6	

RY PETROLEUM CO, et al vs ADAMS & PECK, et al

Rev.	Civil Docket Continuation	
	PROCEEDINGS	Date Orde Judgment :
16	Filed ANSWER OF PETER HUANG TO COMPLAINT OF BERRY PETROLEUM, et al	
20 15	Filed agreed STIPULATIONthat the time for Defendant Huang to move or answer with respect to the Complaint is extended to & including March 14, 1973. Reissued SUMMONS as to Gottfried von Meyern Hohenberg	WMTJı
6	Filed MARSHALS RETURN ON SUMMONS executed 7-9-73 by serving Gottfri von Meyern Hohenberg, by delivering to V. Reichenbach-Sec.	ed
23	Filed STIPULATION Between Attorneys for Plaintiffs and Defendant Gottfried Von Meyern Hohenberg to extend for 20 days time to respond from date of decison of Judicial Panel on Multidistrict Litigationor o/b date of first pre-trial conferencewhichever should occur first Filed copy of STIPULATION (above) with Order approving	WMTJx
23 6	Cys mld to counsel Received/OPINION AND ORDER re transfer to SD/NY before the Judicial Panel on Multidistrict Litigation	
13	Filed cc OPINION AND ORDER (transfer to SD/NY before Judicial Panel on Multi- district Litigation	

region and Markey

ATTORNEYS FOR DEFENDANTS

Page 1a

PROCEEDINGS		Date Order or Judgment Noted
for ADAMS & PECK:	for BENJAMIN F. BRESLAUER;	
Simpson Thacher & Bartlett	pro se:	
By: Joseph T. Dennin	11530 Dona Dorotea Dr.	
One Battery Park Plaza	Studio City, Calif. 91604	
New York N Y 10004		
New York 83-9000 10004	for Peter Huang	
	Richard Nolan 212-422-3400	
	1 Chase Manhattan Plaza, N.Y.	,N.Y.100
	for BRYCE CRIDER:	
•	Richard H. Caldwell of	
JAMES A. LEWIS ENGINEERING:	Butler, Binion, Rice, Cook	
Taba I Bayon of	& Knapp	
Akin, Gump, Strauss, Hauer & Feld	110 Esperson Bldg.,	
2800 Republic National Bank Bldg.	Houston, Texas 77002	
for BRYCE CRIDER: Richard H. Caldwell of Butler, Binion, Rice, Cook		
	for ALLEN & COMPANY, INC.:	
for SIDNEY KIBRICK:	Holtzmann, Wise & Shepard	
Gendel, Raskorr, Shapiro & Quitther	Non York N V 10004	
by Richard S. Berger		
Las Assolate California 90048		
7213) 653-3880		
	1700 Mercantile Bank Bldg.	
	Dallas, Texas	
for HOWARD D. MARTIN:		1
Sam S. Stollenwerch of	for ELY A. LANDAU: See back	for loca
Dalton, Moore, Forde, Joiner &	Edmund R. Rosenkrantz	counse
Stollenwerch	1370 Avenue of the Americas	
2110 Republic National Bank Tower Dallas, Texas 75201 (747-6335)	New York, N. Y., 10019	
Dallas, Texas 7522 V	For American Stock Eychange :	-
5 DING WATER DALDE CHANTED	For American Stock Exchange : Fletcher L. Yarbrough	· · · · · · · · · · · · · · · · · · ·
for BURT KLEINER, RALPH SHAPIRO,	Carrington, Coleman, Sloman, John	son
for KLEINER, BELL & CO, KLEINER,	& Blumenthal	
BELL & CO. INC. and LIONEL BELL:	One Main Place	
Thomas J. McDermott, Jr. of	Dallas, Tex. 75250	1 .
Kadison, Pfaelzer, Woodard & Quinn 611 West Sixth St.	For Deft Arthur Young & Co.:	
Los Angeles, Calif., 90017	D. L. Case	
626-1251	Jackson, Walker, Winstead, Can	twell
LOUIS P. BICKEL	& Miller	
Johnson, Bromberg, Leeds & Riggs	43rd Flr. First National Bank	Bldg.
1500 - 211 N. Ervay Bldg.	Dailas, Texas 75202	
Dallas, Texas 75201		

	PROCEEDINGS	Judgm:
_	for RODNEY W. LOEB	
	Vinson, Elkins, Searls, Connally & Smith	
	1 Ry: John C. Snodgrass	
	First City National Bank Bldg. Houston, Texas 77002	
	713/225-2411 ·	+
	/13/223-2411	+
	Dee J. Kelly	
	1113 Fort Worth Natl Bank Bldg.	
	Fort Worth, Texas 76010	
	817/332-7331	
	FORELY A. LANDAU	
		+
	A. B. Conant, Jr. of	
	SHANK, IRWIN, CONANT,	
	WILLIAMSON & GREVELLE 2827 First National Bank Bldg.	
	Dallas, Texas 75202 748-9696	
	Dallas, lexas /JZUZ /40 /0/0	
	For VARIETY, INC.	
	O'Brien Raftery Rosenbloom & Grainger	
	By: Edmund C. Grainger, Jr.	
	152 West 42nd Street	
	New York, New York 10036	-
۸.	For Deft Peter Huang:	+
-	Richard E. Nolan	
	1 Chase Manhattan Plaza	
	New York, N.Y. 10005	
	212-422-3400	
	FOR GOTTFRIED VON MEYERN HOHENBERC:	
	Burgoyne Michels Rose & Williamson	
	551 Fifth Avenue	
	New York, New York 10017	
	Certified a true copy of an instrument	
	Shift in Everyon on A-1	
	JOSEPH Manager Chart, U.S. District	
	Court Morthern A con Page	
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	A-9	

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CIVIL DOCKET UNITED STATES DISTRIC COURT

Jury demand date:

TITLE O	F CASE				ATTORNEYS	
			For pl	aintiff:		
BERRY PETROLEUM	1 COMPANY					
VS.						
ADAMS & PECK						
			For d	efendant:		
			101 0			
MULTIDISTRICT	LITIGATION CASE					
ON TRANSFER FF DKT# CA-3-6579	OM N.D. TEXAS					
	11			NAME OR	II	- li
AND THE RESERVE OF THE PARTY OF	**	11	DATE	RECEIPT NO.	REC.	<u> </u>
STATISTICAL RECORD	COSTS				1 1	1
	Clerk					
J.S. 5 mailed	Clerk					
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J.S. 5 mailed J.S. 6 mailed	Clerk					
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J.S. 5 mailed J.S. 6 mailed Basis of Action: Action arose at:	Clerk Marshal Docket fee Witness fees					
J.S. 5 mailed J.S. 6 mailed Basis of Action:	Clerk Marshal Docket fee Witness fees	A-10				

Page 2

DATE	PROCEEDINGS	I Order Juggment N
3 7,73	Filed MDL opinion and order of transfer of this action from the	
المادا د	no. Dist of Texas, letter requesting filed papers mailed.	
g15-73	Filed papers originally filed in U.S.D.C. No. Dist of Texas, Dallas	
	Div. were this day: Complaint, Summons, Docket sheet, etc.	
et.5-73	Filed deft's (Allen & Comp. Inc.; Arthur Young & Comp. and Kleiner	31
	Bell Group) in opposition to pltff's motion for remand for tri	<u> </u>
	Till a latte (Aller & Comp. The Anthum Young & Comp. and Kleinen	
Nox . 9-7	Bell Group) Notice of Motion for declaring a class action &	
	judgment dismissing the complaint.	
	Judgment dismissing the complaint.	
Nov 9-7	Filed deft's (Arthur Young & Comp.) Memorandum in support of motion	for an
1400.7-1	order declaring this action not to be a class action & for	
	judgment.	
ov.8-73	Filed(deft's)Affidavit of J.F. Dennin in opposition to Pltff's	-0-7
_	Motion to remand this action to Texas.	Dock.
ov.8-73	Filed Affidavit of General Counsel for CUO Class in support of prop	osed //
	Settlement with Deft's (Arthur Young & Company).	Decl
.ov.8-73	Filed Water and un as demeral Counsel for CUC Class Action Pltff's in Support of proposed Settlement with Deft's (Arthur Young & Sec	nace
	1 The state of the	dul el
ov.8-73		Luzion
ov.8-73		y
ov.9.73	Schedules.	
12.7	B Filed (deft's) Affidavit of S.D. Hoffman in support of order declari	ng
07.13-1	this action	
5v.14-7		prort
	of motion.	
7.13-73	Filed affidavit of Defendant Peter Huang.	
Nov.	3 Filed Plaintiff's response to motion of Allen& Company, Et Al's, for	
	order declaring this action not to be a Class Action andfor	
	Judgment Dissmissing the complaint.	
Jun6,74	Filed Motion by dert's (Howard D. Martin) for withdrawal and	
	substitution of Counsel, McCarthy & Pillon, So Ordered; by Mac Fadden, J	
	Mac Fadden, J.	1
20 7-7	Filed memorandum OPT TON #11,098 The Court is of the crimion that defts. are entitled to judgment and the complaint is due to be dismissed cFadden, J.	
.ug.19-7L	Filed Craer-that motion of dort. A erican Stoor accounte to dismiss complaint is	
1 /	granted notion to disaiss is treated as motion for summary judgment on behalf	
	of defts. The Meiner Bell Group, Arthur Young & Co., & Allen & Co., inc.,	
	and the complaint is dismissed as to themJudgment is granted to the regaining	
	dects, on the pleadings and the case is dismissed as to them places rotion	
	to remand is denied'lo Fadden, JJudement enteredClerk ent. 8-19-74	
Sep.12,7	Filed pltffs'. (Beary Petroleum Company, et-al) notice of appear	
	from final judgment of 8/14/74.	+
ep.12,7	Filed pltffs'. (Berry Petroleum Company, et-al) bond for costs on	+
	anneal in the sum of \$250.00 to be paid to delts. (adams and	
	Peck, et-al.) Malled notices of appeal to: Louis P. Bickel, Esq.;	1
	D.L. Case, Esq.; John L. Hauer, Esq.; Harold Hoffman, Esq.; Sam S. Stollenwerck, Esq.; J. Vernon Patrick, Jr., Esq.; Richard E. Holan.	F30 - *
	Edmund R. Rosenkrantz, Esq.; Thomas J. McDernott, Jr., Esq.; Josep	12.
	Dennin, Esq.: Richard S. Berger, Esq.: A.B. Conant, Ir., Esq.: Ed. u.d. C	Lorain
	Esq.; John J. Loflin, Esq.; Frank P. Broz, Esq.; William G. Webb, Esq.	;
	A-11	
		1

JUDGE MC FADDEN

PAGE 3 JUDGE MC FADDEN

M-19-95 73 CIV 3.

PROCEEDINGS

9,74	Fletcher Yarbrough, Esq.; Richard H. Caldwell, Esq.; Benjamin F. Brealauer, in Propria Persona; Robert B. Block, Esq.; P.B. Konrad Knake, Esq.; Stanley E. Michaels, Esq.; Edward Lester, Esq.; Oliver M.Clege, Esq.; John C. Snodgrass, Esq.; William P. Hindman, Jr., Esq.; Patterson, Belknap & Webb; Stuart D. Perlman, Fsq.; Speranza & Veverka. Filed order extending time in which defts! (Berry Petroleum Coet-al) shall cause the record on appeal transmitted to the U.S.C.A. for the 2nd. Cir. to and including Dec. 10,1974, McFadden, J. Filed Plaintiffs!, Berry Petroleum Co. et-al Designation of Contents of Record and Statement of Issues on Appeal. Filed Order vacating the notice of taking deposition by pltff.
g 16-73	Filed Order vacating the notice of taking deposition by piti.
	of certaind defendants. DeFadden,J.

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

CIVIL ACTION NO. CA-3-6579-C

BERRY PETROLEUM COMPANY, An Arkansas Corporation (Dissolved); J. E. O'DANIEL; YVONNE LAY; McALESTER FUEL COMPANY; AND GERALD P. PATTEN & CO., INC.,

Plaintiffs

v.

ADAMS & PECK; ALLEN & COMPANY, INCORPORATED;
AMERICAN STOCK EXCHANGE; ARTHUR YOUNG &
COMPANY; A. BRUCE ROZET; OLIVER A. UNGER;
IRVING GOLDSTEIN; SIDNEY KIBRICK; RICHARD
A. SARAZAN; RODNEY W. LOEB; ARNE KALM;
H. IGOR ANSOFF; GOTTFRIED von MEYERN
HOHENBERG; HOWARD D. MARTIN; PETER GETTINGER;
KLEINER, BELL & CO.; KLEINER, BELL & CO., INC.;
BURT KLEINER; LIONEL BELL; RALPH SHAPIRO;
THEODORE R. SAYERS; PETER HUANG; BENJAMIN
F. BRESLAUER; SOL STAMESHKIN; BRYCE CRIDER;
ELY A. LANDAU; JAMES A. LEWIS ENGINEERING,
a Division of UNIVERSITY COMPUTING CORPORATION;
and VARIETY, INC.,

Defendants.

COMPLAINT

Plaintiffs bring this civil action against the above named defendants for damages and for cause of action allege:

Plaintiffs

- 1. Plaintiff, Berry Petroleum, is an Arkansas Corporation ("Berry-Arkansas"), incorporated in 1957, dissolved on October 31, 1968, but whose corporate existence is continued by the laws of Arkansas for the purpose of this action.
- 2. Plaintiffs, J. E. O'Daniel, a resident of Arkansas; Yonne Law, a resident of Texas; McAlester Fuel Company, a Delaware corporation; and Gerland P. Patten & Co., Inc., an Arkansas corporation, bring this action on their own behalf and on behalf of certain past and present owners of the common capital stock of Commonwealth United Corporation ("Com-

monwealth") similarly situated. Each of such plaintiffs was the owner of shares of the common capital stock of Berry-Arkansas prior to its dissolution, and each of the plaintiffs acquired stock of Commonwealth pursuant to the Plan and Agreement of Reorganization (Reorganization Agreement") hereinafter described.

Defendants

3. At times pertinent to the Complaint, the following defendants were officers and/or directors and "controlling persons" of Commonwealth:

NAME	OFFICIAL POSITION
A. Bruce Rozet	Chairman of the Board of Directors, President, Chief Executive Officer, and Director
Oliver A. Unger	Executive Vice President and Vice Chairman of the Board of Directors
Irivng Goldstein	Executive Vice President and Treasurer
Sidney Kibrick	Vice President-Real Estate
Richard A. Sarazen	Vice President-Finance
Rodney W. Loeb	Vice President-Legal
Arne Kalm	Vice President-Corporate Development
H. Igor Ansoff	Director
Gottfried von Meyern Hohenberg	Director
Howard D. Martin	Vice President-Oil and Gas
Peter Gettinger	Director, Secretary and General Counsel
Theodore R. Sayers	Chairman of the Board of Directors and Director
Peter Huang	Director
Benjamin F. Breslauer	Comptroller
Ely A. Landau	Director, President of Commonwealth United Entertainment, Inc. and/or Commonwealth

- 4. At times pertinent to the Complaint, defendant Kleiner, Bell & Co., Inc. ("Kleiner, Bell"), a corporation organized and existing under and by virtue of the laws of the State of Delaware, was a member of the American Stock Exchange until June 11, 1970 and was a "controlling person" of Commonwealth.
- 5. At times pertinent to the Complaint, defendant Kleiner, Bell & Co. was a partnership and was a "controlling person" of Commonwealth.

- 6. At times pertinent to the Complaint, defendant Bryce Crider was a director and treasurer of Sunset International Petroleum Corporation, a wholly-owned subsidiary of Commonwealth, and was Assistant Secretary-Treasurer of Commonwealth.
- 7. At times pertinent to the Complaint, defendant Sol Stameshkin was a Director of Public Relations of Commonwealth.
- 8. At times pertinent to the Complaint, defendant Arthur Young & Co. ("Arthur Young") was a partnership doing business in the Northern District of Texas and prepared rocertified financial statements and earnings statements of Commonwealth and certain of its subsidiaries and affiliates, and permitted its name to be used in connection therewith.
- 9. At times pertinent to the Complaint, defendant Adams & Peck was, with Kleiner, Bell, a lead underwriter of the sale of \$15,000,000 principal amount of 6% convertible subordinated debentures, due July 1, 1983, of Commonwealth, under a Registration Statement filed with the Securities and Exchange Commission on June 11, 1968, as later amended. At all times pertinent to the Complaint, defendant Gottfried von Meyern Hohenberg was a general partner of Adams & Peck.
- 10. At times pertinent to the Complaint, defendant Allen & Company, Incorporated, a corporation domiciled in the City of New York and organized and existing under the laws of the State of New York, and with an officer registered to sell securities in the State of Texas, was, with Kleiner, Bell, a lead underwriter of the exchange offer to holders of common stock of the Seeburg Corporation, under a Registration Statement filed with the Securities and Exchange Commission on September 23, 1968, as later amended.
- 11. At times pertinent to the Complaint, defendant Kleiner, Bell served as dealer-manager, financial consultant, and investment banker for Commonwealth, and defendants Burt Kleiner, Lionel Bell and Ralph Shapiro, were controlling stockholers of Kleiner-Bell & Co., Inc. and "controlling persons" of Kleiner, Bell & Co., Inc. and general partners of Kleiner-Bell & Co.
- 12. At times pertinent to the Complaint, defendant James A. Lewis Engineeirng, a division of University Computing Corporation, formerly James A. Lewis Engineering, Inc., was consulting petroleum engineer for

Commonwealth and its wholly owned subsidiary, Sunset International Petroleum Corporation and permitted its name to be used in connection therewith.

- 13. At times pertinent to the Complaint, defendant Variety, Inc., a corporation domiciled in New York, published a daily newspaper "Variety," an instrumentality of interstate commerce circulated through the United States Mails.
- 14. At times pertinent to the Complaint, defendant American Stock Exchange was an unincorporated association of brokerage firms, doing business in interstate commerce throughout the United States, with its principal place of business in the State of New York, but with a substantial part of its activities carried on in Texas.

Jurisdiction

15. Jurisdiction of this Court rests on Section 27 of the Securities Exchange Act of 1934 [15 U.S.C. §78aa] and under state laws pendent jurisdiction. This cause of action arises under Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and the rules and regulations of the Securities and Exchange Commission promulgated under said act, state laws, and common law principles. This Court also has jurisdiction on the basis of diversity of citizenship, pursuant to 28 U.S.C. 1332, with respect to those defendants who are not citizens of Arkansas or Texas. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.

Venue

16. The acts and transactions complained of herein were effected by means and instrumentalities of interstate commerce or the mails and took place within this district.

The Class

17. This is a class action brought under Rule 23(a) and Rule 23(b) of the Federal Rules of Civil Procedure on behalf of all person (hereinafter "The Class") who (i) owned common stock of Berry-Arkansas as of October 16, 1968, the date of the notice of stockholders of the meeting to consider approval of the reorganization and (ii) received common stock of Commonwealth pursuant to the terms of the Reorganization Agreement and the dissolution of Berry-Arkansas. Such class is so numerous that the joinder

of all members as parties would be impractical and there are questions of fact and law common to such class and plaintiffs will fairly and adequately protect the interests of such class. Such class action is brought because prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to the individual members of the class and the questions of law or fact common to the members of the class predominate over any questions affecting any individual members. The members of the class are so numerous that it is impracticable to bring them all before the court; there are questions of law and fact common to the class, which questions predominate; the claims of the plaintiffs herein are typical of the claims of the class and plaintiffs will fairly and adequately represent the interests of the class. This class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

The Facts

- 18. On August 20, 1968, Commonwealth and Berry-Arkansas entered into the Reorganization Agreement under the terms of which Berry-Arkansas agreed to convey to Commonwealth or its nominee substantially all of the assets of Berry-Arkansas in exchange for 448,654 shares of the common stock of Commonwealth, plus additional Commonwealth stock, subject to the outcome of certain litigation then pending against Berry-Arkansas and subject to the resolution of certain other claims. Consummation of the agreement was made in Dallas, Texas, within this district, on October 31, 1968, and subsequently Berry-Arkansas distributed to its shareholders the members of The Class, the common stock of Commonwealth received by it in exchange for its assets.
- 19. Commencing on or about January 1, 1968, defendants Rozet, Burt Kleiner, Gettinger, Kibrick, Loeb, Breslauer, Martin and certain other defendants, acting in close concert and conspiracy, agreed to acquire Commonwealth securities and to cause Commonwealth to embark upon a course of dealing which operated as a fraud upon plaintiffs and The Class, to enter into financial transactions which had no legitimate business purpose, disseminate false information, and withhold material information, all of which artificially manipulated and influenced and was designed to so influence and manipulate the market price of Commonwealth securities.
 - 20. At times pertinent to the Complaint, securities of Commonwealth,

including convertible debentures, convertible preferred, warrants and shares of stock, were listed and traded on the American Stock Exchange, a national securities exchange, except for the period after July 22, 1969, when the American Stock Exchange suspended trading in Commonwealth stock and convertible debentures on said exchange. On that date, Commonwelth stock was traded on the American Stock Exchange at \$8.125, Commonwealth convertible debentures were traded at a price of \$67.00, and Commonwealth preferred was traded at a price of \$16.25. On or about August 1, 1969, the Securities and Exchange Commission directed that over-the-counter trading in Commonwealth securities be suspended. On that date the over-the-counter high and low bids for Commonwealth stock were \$4.75 and \$4.25, respectively. On December 23, 1969, over-the-counter trading in Commonwealth common stock was resumed, at which time the over-the-counter price of Commonwealth stock was \$1.50 bid and \$2.50 asked. As of the date of the filing of this Complaint, the over-the-counter price of Commonwealth common stock is approximately \$0.23 bid, \$0.28 asked.

- 21. Commencing on or about January 1, 1968, defendants concealed and omitted to disclose to plaintiffs and The Class the said conspiracy and the nature and extent of Commonwealth's relationship with defendant Kleiner, Bell and its principals, each of which was a material fact due to be disclosed to plaintiffs.
- 22. The overt and unlawful acts and practices of defendants presently known to plaintiffs include the following:
- (a) In January, 1968, Commonwealth agreed to sell \$735,000 face amount of its convertible debentures to defendants Rozet, Goldstein, Kibrick and Breslauer for \$525,000, convertible to Commonwealth common stock at \$7.00 per share. Defendants failed to disclose the full terms of this transaction and to disclose that Burt Kleiner was an endorser of the notes of the said defendants for sums borrowed to consummate such purchase. Defendants further failed to disclose that Kleiner, Bell was the financial consultant, broker-dealer, and investment banker of Commonwealth and to fully disclose the relationship between the Commonwealth management and Burt Kleiner and Kleiner, Bell.
- (b) On or about June 22, 1968, Commonwealth filed with the Securities and Exchange Commission a Registration Statement (Form S-1)

as amended, containing certain financial statements and other material facts represented in the Reorganization Agreement to fairly present the condition (financial or otherwise) of Commonwealth, as of the date of such Registration Statement and as of October 31, 1968; said Registration Statement contained erroneous and misleading material statements and did not fairly present the condition (financial or otherwise) of Commonwealth and among other things, contained false, material and substantial overstatements and over-evaluations of the assets of Commonwealth's then principal subsidiary, Sunset International Petroleum Corporation ("Sunset") whose corporate officers were located in Dallas, Texas.

- (c) In August, 1968, defendants caused Commonwealth to enter into an agreement with Delbert W. Coleman and Louis J. Nicastro, who were the chairman of the board and the President, respectively; of Seeburg Corporation of Delaware ("Seeburg") by which Commonwealth was to buy from Coleman and Nicastro 375,000 shares of Seeburg common stock at a price of \$35.00 in cash, together with a warrant, expiring November 15, 1968, to purchase one share of Commonwealth common stock at \$17.25 per share. As part of the same agreement, Commonwealth agreed to afford all other holders of Seeburg common stock an opportunity to exchange such stock for a total consideration in Commonwealth securities equal to, and no less favorable than, the per share purchase price to Coleman and Nicastro under said agreement.
- (d) In October, 1968, defendants caused Commonwealth to furnish to Berry-Arkansas copies of the Prospectus ("Seeburg Prospectus") being submitted to the Seeburg stockholders to be made a part of the proxy material submitted by Berry-Arkansas to its shareholders at the special stockholders meeting to be held to consider the approval of the Reorganization Agreement. The Seeburg Prospectus contained erroneous and misleading statements of material facts and did not fairly represent the condition, financial or otherwise, of Commonwealth, and among other things, contained false, material and substantial over-statements and over-evaluation of the assets of Commonwealth's then principal subsidiary, Sunset. Defendants intended that plaintiffs and The Class rely on the Seeburg Prospection in purchasing the common stock of Commonwealth, which they did to the damage and detriment.
 - (e) In September, 1968, Commonwealth announced in the general and

financial news media that it was negotiating to purchase the controlling interest of Metro-Goldwyn-Mayer, a major motion picture company. Copies of the press reports of the MGM "takeover" and the earnings reports of Commonwealth for the six-month period ending June 30, 1968 were sent by defendants to Berry-Arkansas through the United States mail. At that time, Commonwealth was not in financial condition to purchase such stock, and, in fact and in truth, was in extreme and serious financial difficulty and could not meet all of its current obligations. Reports of the attempted "take-over," which were widely published in the general news media and in financial and trade publications, caused the price of Commonwealth securities to rise considerably. In the September 4, 1968 issue of "Variety" false and misleading statements of the financial condition of Comonwealth and Sunset were made in connection with the purported purchase by Commonwealth of the MGM common stock. In view of Commonwealth's poor financial condition at the time of the dissemination of such information, defendants knew, or should have known, that it was, in fact, impossible to conclude successfully such purchase, and it was undertaken with no real hope of success, but rather for the purpose of influencing and manipulating the market price of Commonwealth stock and securities on the American Stock Exchange, to enable Comonwealth to consummate acquisitions with its securities, such as the Berry-Arkansas transaction then pending.

- (f) In September of 1968, Commonwealth announced earnings for the first six months of 1968 of \$2,182,000 before a special charge of \$450,000, or net income of \$1,732,000, of which \$1,258,000 was allegedly earned in the second quarter of 1968 and \$474,000 earned in the first quarter of 1968. In fact and in truth, said earnings were grossly overstated and misleading and known by defendants to be grossly overstated, and reports thereof in the general financial and trade media were misleading and designed to artificially influence and manipulate the price of Commonwealth securities.
- (g) Copies of the S-1 form, the Seeburg Prospectus, press reports of the MGM take-over including the September 4, 1968 "Variety" report, and of the 1968 interim earnings reports, as described above, were caused by defendants to be sent by Commonwealth to Berry-Arkansas by the United States mail in interstate commerce from Comonwealth's offices in Beverly Hills, California, and Dallas, Texas, to Berry-Arkansas's office in Magnolia, Arkansas; such information was intended by defendants and Commonwealth

to be relied upon by Berry-Arkansas and its officers, directors and stockholders, in connection with the approval by the directors and stockholders of Berry-Arkansas of the Reorganization Plan and the sale of the assets of Berry-Arkansas for the securities of Commonwealth; such reports contained false and misleading statements, particularly with reference to the assets and cash reserves of Comonwealth and the assets and profitability of Sunset, its then principal subsidiary; such information was intended by defendants to be, and was, relied upon by Berry-Arkansas, and its officers, directors and stockholders in the sale of its assets to Commonwealth in exchange for Comomnwealth securities on October 31, 1968.

- (h) On or about February 1, 1968, Howard D. Martin, then an officer and director of Commonwealth and of its wholly owned subsidiary, Sunset, in furtherance of said conspiracy, negotiated with officers of Berry-Arkansas to acquire all of the assets of Berry-Arkansas. Howard D. Martin represented that Comonwealth was in a sound financial condition and failed to disclose that Sunset was at that time experiencing a serious liquidity crisis and was financially unable to pay its debts as they matured or to operate its oil and gas wells in accordance with good oil field practices.
- (i) Defendants failed to disclose to Berry-Arkansas and The Class that the oil and gas reserves referred to in the documents described above were based on oil and gas reserve reports prepared under the supervision and over the signature of Howard D. Martin, prior to the time he became an officer and director of Commonwealth.
- (j) Defendants made false and misleading statements concerning the oil and gas reserves owned by Commonwealth and its wholly owned subsidiary, Sunset, as of January 1, 1968. Such statements were made in the Registration Statement (Form S-1), the Seeburg Prospectus, and other material submitted to plaintiffs and The Class by defendants.
- (k) Defendants failed to disclose to Berry-Arkansas and The Class that the oil and gas reserves stated to be owned by Comonwealth were based on false and obsolete information which defendants knew or should have known were inaccurate when these statements were made in the Registration Statement, the Seeburg Prospectus and other material submitted to plaintiffs and The Class by defendants.
- (l) Defendants failed to disclose to Berry-Arkansas and The Class that the real estate owned by Comonwealth and shown as an asset on its financial

statements in the documents described above had a value substantially less than the book value shown on said financial statements, and that many of the loans secured by liens on said real estate were in default and Commonwealth did not have the resources to pay said loans, and the kind and type of real estate owned by Commonwealth.

- (m) Defendants made false and misleading statements that the consolidated financial statements for Commonwealth as of December 31, 1967, fairly presented its financial condition and the result of its operation for the year then ending, and that since December 31, 1967, there had been no material adverse changes in Commonwealth's condition, financial or otherwise.
- (n) During the period commencing January 1, 1968 to and including December 31, 1969, defendants caused Commonwealth to fail to disclose material facts and to continue to disseminate and release financial information concerning Commonwealth which was materially false and misleading. Said omissions and materially false and misleading information were contained in, among other things, the Registration Statement filed with the Securities and Exchange Commission on June 11, 1968; the Registration Statement for the Seeburg exchange offer filed with the Securities and Exchange Commission on September 23, 1968; the Seeburg Prospectus dated October 16, 1968; Commonwealth's annual report for 1968; its proxy statements dated June 24, 1969 and December 2, 1969; and various press releases and registration statements and listing applications filed with the Securities and Exchange Commission and the American Stock Exchange. Defendant American Stock Exchange was negligent in permitting said listing applications and permitting the actions and practices of defendants designed to manipulate the market price of Comonwealth securities traded on the American Stock Exchange herein set forth. The failure to disclose the truth concerning Comonwealth's financial condition had the effect of causing Commonwealth's securities to trade at artificially inflated market prices. Plaintiffs and The Class in purchasing and retaining Commonwealth securities as aforesaid were misled to their damage and loss by the artificially inflated market price thereof at the time of purchase and retention.
- (o) Defendant Arthur Young prepared and certified the aforesaid false and misleading financial statements and failed to demand of the other defendants that truthful disclosures be made by them as to such false and

misleading financial statements. Defendant Arthur Young knew, or should have known, that plaintiffs and The Class would rely on such false and misleading financial statements in purchasing and retaining the common stock of Comonwealth, which they did to their damage and detriment.

- 23. Defendants knew, or should have known, that the Registration Statement, Seeburg Prospectus, and other representations made by Commonwealth, and referred to herein, were false and misleading, were material to the transaction, and would be relied upon by plaintiffs and the officers, directors and stockholders of Berry-Arkansas; each of defendants approved, authorized, ratified and/or acquiesced in the false and misleading statements herein complained of and/or otherwise aided and abetted in the implementation of the wrongs complained of herein.
- 24. Defendants concealed from plaintiffs the facts set out herein until after May, 1970, when Sunset filed Proceedings for Reorganization in this Court (BK3-1640) under Chapter XI of the Bankruptcy Act.
- 25. The fair market value of each share of the common stock of Berry-Arkansas on October 31, 1968, the date the assets of Berry-Arkansas were transferred to Commonwealth pursuant to the terms of the Reorganization Agreement, was not less than \$14.00 per share.
- 26. By reason of the foregoing unlawful and fraudulent acts of defendants, as alleged herein, Berry-Arkansas and The Class have been damaged as follows:
 - (A) Plaintiffs and The Class were induced to make and ratify the Reorganization Agreement under which the assets of Berry-Arkansas were transferred to the defendants and were thereby damaged to the extent of the value of assets transferred.
 - (B) Plaintiffs and The Class were induced to transfer the shares of the common stock of Berry-Arkansas which they owned for shares of the common stock of Commonwealth.

Prayer

WHEREFORE, plaintiffs pray for judgment:

- A. Awarding said plaintiffs and each member of The Class damages for the wrongs herein complained of;
- Awarding said plaintiffs the expenses of this litigation, including reasonable attorneys' and accountants' fees;

C. Granting said plaintiffs and The Class such other and further relief as the Court may deem just.

Respectfully submitted,

/s/ Stephen Philbin

Stephen Philbin

LOCKE, PURNELL, BOREN, LANEY & NEELY 3600 Republic Bank Tower Dallas, Texas 75201 744-4511

KEITH, CLEGG & ECKERT P. O. Drawer A Magnolia, Arkansas

LESTER AND SHULTS 1330 Tower Building Little Rock, Arkansas 72201

JURY DEMAND

Plaintiffs hereby request a trial by jury, this the 15th day of December, 1972.

Stephen Philbin

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

Civil Action No. 3-6579-C

BERRY PETROLEUM COMPANY, ET AL

v.

ADAMS & PECK, ET AL ORIGINAL ANSWER OF DEFENDANT ARTHUR YOUNG & COMPANY

TO THE SAID HONORABLE COURT:

Now comes defendant ARTHUR YOUNG & COMPANY and files this, its Original Answer to Plaintiffs' Original Complaint, thereby showing the Court the following:

1.

Defendant lacks sufficient information upon which to form a belief as to the allegations contained in Paragraph 1.

2.

Defendant lacks sufficient information upon which to form a belief as to the Plaintiffs, their residences and ownership of shares of sotel: as alleged in Paragraph 2. Defendant denies the remainder of the allegations contained in Paragraph 2.

3.

Defendant denies the allegations of Paragraph 3, except it admits that at certain times some of the named Defendants held the positions alleged.

4

Defendant lacks sufficient information upon which to form a belief as to the allegations contained in Paragraph 4.

5.

Defendant lacks sufficient information upon which to form a belief as to the allegations contained in Paragraph 5.

6

Defendant admits that subsequent to January 23, 1968, Sunset Inter-

national Petroleum Company was a wholly-owned subsidiary of Commonwealth, and at times Bryce Crider was treasurer and a director of Sunset. Defendant denies the remainder of the allegations contained in Paragraph 6.

7.

Defendant lacks sufficient information upon which to form a belief as to the allegations contained in Paragraph 7.

8.

With respect to the allegations contained in Paragraph 8, Defendant admits that it was a partnership doing business in the Northern District of Texas; that it had issued its report upon certain financial statements of certain subsidiaries of Commonwealth, and that it permitted its report to be published in specific instances. Defendant otherwise denies the allegations contained in Paragraph 8.

9.

Defendant admits the allegations of Paragraph 9, except it lacks sufficient information upon which to form a belief concerning the allegations with respect to Gottfried von Meyern Hohenberg.

10.

With respect to the allegations contained in Paragraph 10, Defendant lacks sufficient information upon which to form a belief as to the corporate status and domicile of Allen & Company and as to the registration of any officer thereof. Defendant admits the remainder of the allegations contained in Paragraph 10.

11.

Defendant admits that Kleiner, Bell served as dealer-manager and financial consultant of Commonwealth. Defendant lacks sufficient information upon which to form a belief as to the remainder of the allegations contained in Paragraph 11.

12.

Defendant lacks sufficient information upon which to form a belief as to the allegations contained in Paragraph 12.

13.

Defendant lacks sufficient information upon which to form a belief as to the allegations contained in Paragraph 13.

14.

Defendant lacks sufficient information upon which to form a belief as to the allegations contained in Paragraph 14.

15.

With respect to the allegations of Paragraph 15, Defendant admits that Plaintiffs purport to base jurisdiction upon the specified statutes. The remainder of the allegations in such paragraph are denied.

16.

Defendant denies the allegations contained in Paragraph 16.

17.

Defendant denies the allegations contained in Paragraph 17.

18.

Defendant denies the allegations of Paragraph 18, except it admits that on or about August 20, 1968, Commonwealth and Berry-Arkansas entered into an agreement, and Defendant refers to said agreement for the contents thereof, and admits further that on or about October 31, 1968, common stock of Commonwealth was delivered to Berry-Arkansas in exchange for its assets.

19.

Defendant denies the allegations contained in Paragraph 19.

20.

Upon information and belief, Defendant admits the allegations of Paragraph 20.

21.

Defendant denies the allegations contained in Paragraph 21.

22.

Defendant denies the allegations contained in Paragraph 22.

23.

Defendant denies the allegations contained in Paragraph 23.

24

Defendant denies the allegations contained in Paragraph 24.

Defendant lacks sufficient information upon which to form a belief as to the allegations contained in Paragraph 25.

26

Defendant denies the allegations contained in Paragraph 26.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim against Defendant ARTHUR YOUNG & COMPANY upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction of the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

Plaintiff BERRY PETROLEUM COMPANY has not such legal existence as entitles it to maintain this action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff BERRY PETROLEUM COMPANY is not the real party in interest and has no standing to maintain this action.

FIFTH AFFIRMATIVE DEFENSE

I.

There is another action pending against Defendant entitled Sherlee Land, Robert R. Jennings, et al v. Commonwealth United Corporation, et al, 69 Civ. 3726, pending in the United States District Court for the Southern District of New York (hereafter the "land action"), alleging the same wrongs as are complained of in the present complaint.

II.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Land action has been declared to be a class action for the benefit of all persons who at any time between October 16, 1968, and August 1, 1969, acquired for value any securities, including common stock, of Commonwealth United Corporation.

III.

Pursuant to and in accordance with Rule 23(c)(2), notice was directed to members of the class, including plaintiffs and the class sought to be represented by them in this action.

IV.

Upon information and belief Plaintiffs and the persons they seek to represent are members of the class in the *Land* action, and any determinations or judgments in that action will include Plaintiffs and the persons they purport to represent.

V.

The Land action remains pending and undisposed of.

SIXTH AFFIRMATIVE DEFENSE

T.

Upon information and belief Plaintiffs previously commenced actions including a purported class action against Commonwealth United Corporation and others, based upon the same transactions herein complained of, and in the previous actions alleged essentially the same wrongs as are asserted in the complaint.

II.

Upon information and belief said actions were compromised and settled, and plaintiffs and the class whom they purported to represent were recompensed for their claimed damage.

SEVENTH AFFIRMATIVE DEFENSE

I.

Defendant repeats the allegations of Paragraphs I through V of its Fifth Affirmative Defense and of Paragraphs I and II of its Sixth Affirmative Defense as if fully set forth herein.

II.

Upon receiving the consideration for settlement described in Paragraph II of Defendant's Sixth Affirmative Defense, Plaintiffs and the class they purport to represent herein surrendered all rights to participate as a member of the class of security holders of Commonwealth as described in Paragraph II of Defendant's Fifth Affirmative Defense.

III.

As a result thereof, Plaintiffs and the class they purport to represent have waived any further claims based upon the transactions alleged in the complaint.

EIGHTH AFFIRMATIVE DEFENSE

T.

Defendant repeats the allegations of Paragraphs I through V of Defendant's Fifth Affirmative Defense, of Paragraphs I and II of its Sixth Affirmative Defense, and of Paragraphs I through III of its Seventh Affirmative Defense as if fully set forth herein.

II.

As further consideration for the settlement described in Paragraph II of Defendant's Sixth Affirmative Defense, Plaintiffs and the class they purported to represent, with knowledge of the existence of the *Land* action prosecuted on their behalf and with knowledge of the claims asserted in the present complaint, executed releases to the parties to the lawsuits described in Paragraph V of Defendant's Fifth Affirmative Defense, without reserving claims against others including Arthur Young.

III.

Said releases were intended to and do bar prosecution of this action.

NINTH AFFIRMATIVE DEFENSE

I.

Defendant repeats the allegations of Paragraphs I through V of its Fifth Affirmative Defense, of Paragraphs I and II of its Sixth Affirmative Defense, of Paragraphs I through III of its Seventh Affirmative Defense and Paragraphs I and II of its Eighth Affirmative Defense as if fully set forth herein.

II.

By reason thereof, Plaintiffs are estopped from maintaining their action.

TENTH AFFIRMATIVE DEFENSE

I.

Defendant repeats the allegations of Paragraphs I through V of its Fifth Affirmative Defense, of Paragraphs I and II of its Sixth Affirmative Defense, of Paragraphs I through II of its Seventh Affirmative Defense and Pargraphs I through III of its Eighth Affirmative Defense as if fully set forth herein.

II.

Plaintiffs had notice of all of the facts and of all of the acts set forth

in the complaint and nevertheless refrained from commencing this action until December 15, 1972, and have thereby been guilty of such laches as should bar Plaintiffs from maintaining this action.

ELEVENTH AFFIRMATIVE DEFENSE

The facts alleged in the complaint and claimed to constitute fraud were discovered and actually known by the Plaintiffs or should have been known by them on or about August 1, 1969, and the right of action set forth in the complaint did not accrue within the time provided by law for commencement of this action.

WHEREFORE, Defendant ARTHUR YOUNG & COMPANY prays judgment dismissing Plaintiffs' complaint or, alternatively, denying Plaintiffs any recovery and awarding this Defendant its costs and disbursements in this cause and for such other relief to which it may be entitled.

Respectfully submitted,

JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER 4300 First National Bank Bldg. Dallas, Texas 75202 742-8451

By D. L. Case

Attorneys for Defendant Arthur Young & Company

A copy of the foregoing answer has been malied this 23rd day of February, 1973, to Mr. Stephen Philbin, 3600 Republic National Bank Tower, Dallas, Texas 75201, attorney for Plaintiffs, and to all other attorneys of record.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket M-19-95

CA 3-6579

In Re:

SEEBURG-COMMONWEALTH UNITED LITIGATION
BERRY PETROLEUM COMPANY, a Arkansas Corporation (Dissolved);
et al.

Plaintiffs

v.

ADAMS & PECK: et al.,

Defendants

MOTION FOR REMAND FOR TRIAL OR ALTERNATIVELY FOR A RULE 16 PRETRIAL CONFERENCE

TO THE HONORABLE COURT:

COME NOW plaintiffs, Berry Petroleum Company, a Arkansas Corporation (Dissolved); J. E. O'Daniel; Yvonne Law; McAlester Fuel Company; and Gerland P. Patten & Company, Inc. and move the Court to remand this action to the United States District Court for the Northern District of Texas for trial or, alternatively, for a Rule 16 pretrial conference and would respectfully show the Court the following:

- 1. The Judicial Panel on Multidistrict litigation by order of August 3, 1973 transferred this litigation to this Court for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C., Sec. 1407. These plaintiffs, by notice of August 12, 1973, attempted to notice the depositions of two defendants residing in Dallas. Such notices were vacated by Order of this Court on August 13, 1973.
- 2. Since the transfer, this Court has approved, *prima facie*, the proposed final settlement of the *Land-Jennings* litigation, thus eliminating any further discovery activity in which the Texas plaintiffs might participate.
- 3. These plaintiffs, therefore, move the Court to remand the Texas case because there is no discovery in progress or planned in the *Land-Jennings* litigation.
- 4. In the alternative, these plaintiffs respectfully request a pretrial conference pursuant to Rule 16 to discuss the possibility of plantiffs pursuing

limited discovery and the Court's consideration of the preliminary motions now pending, i.e., motions for more definite statements by defendants Martin, Adams & Peck, and Landau and the motion to dismiss by defendant American Stock Exchange.

Respectfully submitted,

Stephen Philbin

LOCKE, PURNELL, BOREN, LANEY & NEELY 3600 Republic National Bank Tower Dallas, Texas 75201 744-4511

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. M-19-95

In re: Seeburg-Commonwealth United Litigation
COMMONWEALTH CASES

NOTICE OF MOTION AND MOTION

BERRY PETROLEUM COMPANY, an Arkansas Corporation (dissolved), et al.,

Plaintiffs,

- against -

ADAMS & PECK, et al.,

Defendants.

Sirs:

PLEASE TAKE NOTICE that defendants Kleiner Bell Group, Arthur Young & Company, and Allen & Company Incorporated will move this Court at 10:00 A.M. on November 15, 1973, at the United States Court House, Foley Square, New York, New York, for an order declaring that this action may not be maintained as a class action and for judgment dismissing the complaint, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York November 7, 1973

POMERANTZ LEVY HAUDER & BLOCK
Ву
A Member of the Firm
Attorneys for Kleiner Bell Group of Defendants
WHITE & CASE
Ву
A Member of the Firm
Arthur & Young & Company

A-35

HOLTZMANN, WISE & SHEPARD,

By

A Member of the Firm

Attorneys for Defendant Allen & Company Incorporated

TO: STEPHEN PHILBIN, ESQ.

Locke, Purnell, Boren, Laney & Neely 3600 Republic National Bank Tower Dallas, Texas 75201

EDWARD LESTER, ESQ. Lester & Shults 1330 Tower Building Little Rock, Arkansas 72201

OLIVER M. CLEGG, ESQ. Keith, Clegg & Eckert 201-204 McAlester Building Magnolia, Arkansas 71753

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 Index No. 73 Civ. 3452

AFFIDAVIT

In re: Seeburg-Commonwealth Litigation

BERRY PETROLEUM COMPANY, an Arkansas Corporation (dissolved), et al.,

Plaintiffs,

- against -

ADAMS & PECK, et al.,

Defendants.

STATE OF NEW YORK COUNTY OF NEW YORK

SS.:

THOMAS J. O'SULLIVAN, being duly sworn deposes and says:

- 1. I am associated with the firm of White & Case, attorneys for defendant Arthur Young & Company and I am familiar with the "proceedings which have taken place in the above-entitled action and the Land action." In addition, I base this affidavit on review of documents on file in the central depository in this litigation located at the offices of Townley, Updike, Carter & Rodgers, including copies of documents filed in certain litigation in the District of Arkansas (discussed in greater detail below) involving Berry Petroleum Company ("Berry") and its former stockholders.
- 2. I submit this affidavit in support of the motion of defendants the Kleiner Bell Group, Arthur Young & Company, and Allen & Company, Incorporated for an order declaring that this action may not be maintained as a class action and for judgment dismissing the complaint.
- 3. The present Berry action ("Berry II") involves claims by former stockholders of Berry who received Commonwealth stock in exchange for their Berry shares.
- 4. Berry entered into an agreement with Commonwealth on about August 20, 1968 whereby Commonwealth was to acquire all of Berry's assets in exchange for Commonwealth stock. A public announcement that the Boards of Berry an Commonwealth had approved the Reorganization Agreement had previously been made on August 3, 1968. On October 16,

1968, Berry sent to each of its stockholders a notice of special meeting to be held to approve the Plan and Agreement of Reorganization, together with a copy of the proxy statement describing the acquisition by Commonwealth of the Seeburg Corporation. The transaction was consummated on October 31, 1968 when Commonwealth delivered its stock to Berry Petroleum for the Berry assets, whereupon the Commonwealth stock was immediately distributed to the Berry stockholders in return for their Berry shares. Berry Petroleum was dissolved on October 31, 1968.

- 5. Published stock price records reveal that on August 2, 1968, the day before the public announcement of the proposed transaction, Commonwealth stock closed on the American Stock Exchange at 141/8. On August 20, the date of the Agrament the closing price of Commonwealth stock was 191/4. On October 15, the day before the notice, the price of Commonwealth stock on the American Stock Exchange was 197/8 low and 20 high and on October 31, the Closing Date, it was 185/8 low and 19 high.
- 6. Commonwealth encountered substantial financial setbacks in 1969, and many lawsuits were commenced, including a proceeding brought by the Securities and Exchange Commission on October 2, 1969. Many of these proceedings are described in Commonwealth's Proxy Statement dated December 2, 1969, which was mailed on or about that date to Commonwealth's stockholders.
- 7. In December 1970 a suit, ostensibly in the name of the dissolved corporation, was commenced in the Western District of Arkansas naming as defendants Commonwealth and its new Berry subsidiary. Thereafter, in June, 1971 the O'Daniel lawsuit, which purported to be a class action, was commenced in the same court also against Commonwealth and its new Berry subsidiary. In 1972 these two suits were consolidated in the Arkansas court.
- 8. After entry of a class action order on February 2, 1972 in the Land case, members of the Land class, including former shareholders of Berry, were mailed notice in accordance with this Court's direction.
- 9. The notice provided that requests by class members for exclusion from the class be received no later than April 10, 1972.
- 10. No such request was received from any former Berry stockholder, except that the lawyers in the above-mentioned Arkansas actions filed a so-called "Request for Exclusion".

- 11. In an effort to resolve all of the litigation arising out of Commonwealth's difficulties there were negotiations with attorneys for the various litigants, including the attorneys in the Berry I and O'Daniel cases. Thereafter, a stipulation of settlement dated May 26, 1972 was entered into in the Land litigation. That stipulation of settlement included a provision that plaintiffs in the Berry I case would receive 54,365 shares of Commonwealth stock (there was also to be an additional amount paid in settlement of Berry I totaling \$325,000 in cash and/or a note).
- 12. The stipulation of settlement entered into in Berry I expressly contemplated that a class action order would be entered in Berry I for the purpose of concluding that settlement, and Commonwealth then agreed to the stipulation of settlement resolving Berry I. Accordingly, Commonwealth did not oppose plaintiffs' motion for the entry of the class action order in Berry I, and such an order was entered July 26, 1972.
- 13. Pursuant to the notices issued in the Land case, claims have been filed my former stockholders of Berry who are within the Land class.
- 14. As a condition to receipt of benefits in the Berry I settlement, the former Berry stockholders were required to execute releases to Commonwealth and to forgo recovery in the Land case against defedants with respect to whom the November 30 and December 15, 1972 Final Orders and Judgments were entered. Obviously, the purpose of this requirement was to ensure that there would not be double recovery on their part, since they were within the Land class and the Land settlement agreement specifically made direct provision for them. However, because these persons are members of the class declared in Land, they are entitled to share in the settlement fund resulting from the settlement with Arthur Young & Company in Land.

/s/ Thomas J. O'Sullivan

Thomas J. O'Sullivan sworn to before me this 7th day of November, 1973

/s/ John F. Goosmann

John F. Goosmann Notary Public

A-39

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of motion, motion, and affidavit was this day served upon all parties by mailing a copy thereof to counsel of record for each party in Docket No. M-19-95.

This the 8th day of November, 1973.

/s/ Thomas J. O'Sulivan
Thomas J. O'Sullivan

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95

COMMONWEALTH CASES 73 Civ. 3452

AFFIDAVIT

In re Seeburg-Commonwealth United Litigation BERRY PETROLEUM COMPANY, an Arkansas Corporation (Dissolved); et al.,

Plaintiffs,

- against -

ADAMS & PECK, et al. (Northern District of Tevas No. CA-3-6579),

Defendants.

STATE OF NEW YORK

SS.:

COUNTY OF NEW YORK

JOSEPH F. DENNIN, being duly sworn, deposes and says:

- 1. I am an attorney associated with the firm of Simpson Thacher & Bartlett, attorneys for defendants Adams & Peck, and I am admitted to practice before this Court.
- 2. I have read the Memorandum submitted on behalf of defendants Allen & Company, Incorporated, Arthur Young & Company and Kleiner Bell Group in opposition to plaintiffs' motion to remand this action to Texas.
- 3. For the reasons stated in that Memorandum, defendants Adams & Peck join in opposition to the motion to remand.

/s/	Joseph F. Dennin
	Joseph F. Dennin

Sworn to before me this 5th day of November, 1973

/s/ Patricia Green
Patricia Green
Notary Public

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95

In Re Seeburg-Commonwealth Litigation 73 Civ. 3452

BERRY PETROLEUM COMPANY, an Arkansas Corporation (dissolved), et al.,

Plaintiffs,

— against —

ADAMS & PECK, et al.,

Defendants.

PLAINTIFFS' RESPONSE TO MOTION OF ALLEN & COMPANY, ET AL FOR ORDER DECLARING THIS ACTION NOT TO BE A CLASS ACTION AND FOR JUDGMENT DISMISSING THE COMPLAINT

This response is submitted by plaintiffs to defendants Kliener Bell, et al's motion to dismiss filed on November 7, 1973, and received by plaintiffs on November 9, 1973. Because this response is being filed with the Court on or prior to November 15th, plaintiffs request the opportunity to supplement this response after November 15th.

T.

PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE LAND ACTION PROCEEDINGS.

- A. Persons sought to be represented by plaintiffs in this action are not members of the Land class by definition.
- B. Plaintiffs in this action have been procedurally excluded from the Land class.

Assuming, arguendo, that plaintiffs as a class acquired securities within the time-frame of this Court's order they still were not members of the Land class for the following reasons:

- Common questions of law and fact did not predominate and the Judicial Panel on Multidistrict Litigation so found.
- (2) The Arkansas Court confirmed the Berry plaintiffs as a separate class.

(3) The Berry class was excluded by effectively opting out.

II.

BERRY PETROLEUM COMPANY HAS STANDING TO SUE

III.

THE COMPLAINT IS NOT BARRED BY THE STATUTE OF LIMITATIONS

EXHIBIT "A" TO PLAINTIFFS' RESPONSE

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. M-19-95 60 Civ. 3726

SHERLEE LAND, et al

PLAINTIFFS

V.

COMMONWEALTH UNITED CORPORATION, et al DEFENDANTS

REQUEST FOR EXCLUSION

Berry Petroleum Company, a dissolved Arkansas corporation, (herein "Berry") and the class of persons who obtained common stock of Commonwealth United Corporation pursuant to the terms of a Plan and Agreement of Reorganization (herein the "Plan") of Berry by their attorneys, Lester and Shults and Keith, Clegg and Eckert, for their Request for Exclusion state:

- 1. Berry has filed suit in The United States District Court, Western District of Arkansas, El Dorado Division against Commonwealth United Corporation and Berry Petroleum Company, a Delaware corporation. This suit is styled Berry Petroleum Company vs. Commonwealth United Corporation, et al, Civil Action No. ED-70-C-58, and is referred to herein as the "Berry Case".
- 2. J. E. O'Daniel and other parties have filed a class action against Commonwealth United Corporation and Berry Petroleum Company, a Delaware corporation, in The United States District Court, Western District of Arkansas, El Dorado Division. This suit is styled O'Daniel et al vs. Commonwealth United Corporation, Civil Action No. ED-70-C-58, and is referred to herein as the "O'Daniel Case".
- 3. On August 20, 1968 Commonwealth United Corporation and Berry Petroleum Company, and Arkansas corporation, executed the Plan. The Plan was consummated on October 31, 1968 and pursuant to the terms of the Plan Berry received certain shares of the common stock of Commonwealth United Corporation and these shares were subsequently distributed to the former stockholders of Berry.

- 4. The Berry Case and the O'Daniel Case involve a claim for rescission of the Plan and in the alternative for damages, based on the shares of common stock of Commonwealth United Corporation issued pursuant to the terms of the Plan.
- 5. Commonwealth United Corporation and certain other parties petitioned the Judicial Panel on Multi-District Litigation to transfer the O'Daniel Case and the Berry Case to the Southern District of New York for coordinated or consolidated pre-trial proceedings. By per curiam order entered October 20, 1971 the Judicial Panel on Multi-District Litigation denied the petition of Commonwealth United Corporation. The opinion of the Panel specifically found that the Berry Case and the O'Daniel Case involved major issues relating to a transaction that was separate and distinct from the transactions emphasized in the Land Jennings complaint.
- 6. The Berry Case and the O'Daniel Case are pending before the Honorable Oren Harris in the The United States District Court, Western District of Arkansas, El Dorado Division.

WHEREFORE, the Plaintiffs in the Berry Case and in the O'Daniel Case by their attorneys of record hereby request exclusion from the "Land" class action with respect to the transaction by said parties with Commonwealth United Corporation as evidenced by the Plan.

KEITH, CLEGG & ECKERT
201 McAllister Building
Magnolia, Arkansas 71753
LESTER AND SHULTS
1330 Tower Building
Little Rock, Arkansas 72201
By Edward Lester

CERTIFICATE OF SERVICE

Edward Lester one of the attorneys for the petitioners states that a ppy of the foregoing Petition was mailed by regular U.S. mail on April 4, 1972 to Stanley L. Kaufman, Esquire, Kaufman, Taylor Kimmel and Miller, 41 East 42nd Street, New York, New York 10017 and to J. Vernon Patrick, Jr., Esquire, Berkowitz, Lefkovits & Patrick, 1400 City National Bank Building, Birmingham, Alabama 35203.

/s/ Edward Lester

A-45

EXHIBIT "B" TO PLAINTIFFS' RESPONSE

March 16, 1973

Mr. William P. Hindman, Jr. Townley, Updike, Carter and Rogers 220 East 42nd Street New York, New York 10017

Dear Mr. Hindman:

In re: Settlement and Escrow Agreement dated October 2, 1972
Commonwealth United Corporation and Berry Petroleum Co.
Berry, Arkansas

In accordance with the settlement and escrow agreement referenced above and on the instructions of Mr. George Pike, Jr., we are enclosing the original executed releases that have been returned thus far as provided in Section 8 of the agreement.

We are enclosing 891 executed release forms, which leaves 86 of the holders of units of contingent interest that have not as yet executed the release, out of a total 977 on the list.

You will note the hyphenated number at the top of each release form. The number to the left of the hyphen denotes the page number and the number to the right denotes our numerical order of listing the names. Therefore, your office will be able to check the releases against the list already furnished by the escrow agent as mentioned in Section 5 of the agreement.

We certainly want the surrender of the enclosed release forms to be acknowledged so as to inform your office as to the progress of the transaction. Since this is requested at this time, we want your office to be mindful of the number of release forms outstanding at this point, thereby, making the final reporting easy to be a follow-up of this report when the time comes. We will appreciate having you acknowledge receipt of the contents of the mailing described above by signing the extra copy of this letter and returning to us in the enclosed envelope for our files.

Thank you, Yours very truly, Homer F. Greer, Jr. Vice President and Trust Officer HFG Jr./bm

Enclosures cc: Mr. George Pike, Jr.

EXHIBIT "C" TO PLAINTIFFS' RESPONSE

September 26, 1972

George Pike, Jr., Esq. Smith, Williams, Friday, Eldredge & Clark Boyle Building Little Rock, Arkansas 72201

Re: Berry Petroleum Company et al. vs. Commonwealth United Corporation

Dear George:

To facilitate the closing of the Stipulation of Settlement, I am enclosing copies of the following documents:

- 1. A proposed release of Commonwealth United Corporation to be executed by members of the class.
- 2. A proposed release from Berry Petroleum Company, a Delaware Corporation, to Commonwealth United Corporation.
- 3. A proposed release from Berry Petroleum Company, an Arkansas Corporation, to Commonwealth United Corporation.
- 4. A proposed release from Commonwealth United Corporation to Berry Petroleum Company, a Delaware Corporation.

Very truly yours,

TERENCA J. LYNCH

CC: George L. Robertson, Esq. Edward Lester, Esq. Oliver Clegg, Esq.

RELEASE

to have acquired securities of Commonwealth United Corporation under a Plan and Agreement of Reorganization dated August 20, 1968 entered into by Commonwealth United Corporation and Berry Petroleum Company, and Arkansas Corporation, and in consideration of the money and stock delivered to the undersigned pursuant to the Stipulation of Settlement approved by the United States District Court, Western District of Arkansas by Order dated August 23, 1972, the undersigned hereby releases and forever discharges the said Commonwealth United Corporation and its present and former subsidiary corporations of any and all claims and rights of action arising out of or relating to the acquisition, retention or sale of any security of Commonwealth United Corporation or of any present or former subsidiary thereof which the undersigned obtained pursuant to the said Plan and Agreement of Reorganization.

Further, the undersigned for the same said consideration releases and surrenders all right to participate as a member of the class of security holders of Commonwealth as determined in the Order entered on February 2, 1972 in an action pending in the United States District Court, Southern District of New York, entitled Sherlee Land, et al. v. Commonwealth United Corporation, et al. (No. 69 Civ. 3726).

Dated:

RELEASE

BERRY PETROLEUM COMPANY, a Delaware Corporation for and in consideration of the mutual promises and benefits contained in the Stipulation of Settlement approved by the United States District Court, Western District of Arkansas by order dated August 23, 1972, hereby releases and forever discharges Commonwealth United Corporation and its present and former subsidiary corporations of any and all claims and rights of action, including those for indemnity and contribution, arising out of or relating to the following civil actions: J. E. O'Daniel, et al., plaintiffs, against Commonwealth United Corporation et al., defendants (civil action No. E.D. 71-C-15) and Berry Petroleum Company, and Arkansas Corporation, plaintiffs, against Commonwealth United Corporation, et al., defendants (civil action No. E.D. 70-C-58).

IN WITNESS WHEREOF, the said BERRY PETROLEUM COM-PANY, a Delaware Corporation, has caused its corporate seal to be hereunto affixed and these presence to be signed by its duly authorized officer on the day of , 1972.

> BERRY PETROLEUM COMPANY, a Delaware Corporation

Ву

STATE OF)
COUNTY OF) ss.:

On the day of , 1972 before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at ; that he is the of BERRY PETROLEUM COMPANY, a Delaware Corporation which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

EXHIBIT "D" TO PLAINTIFFS' RESPONSE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

Civil Action No. ED 71-C-15

J. E. O'DANIEL, YVONNE LAW and GERLAND R. PATTEN & CO., INC.,

Plaintiffs

VS.

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation,

Defendants

Civil Action No. ED 70-C-58

BERRY PETROLEUM COMPANY,
an Arkansas Corporation,

Plaintiff

VS.

COMMONWEALTH UNITED CORPORATION
a Delaware corporation, and
BERRY PETROLEUM COMPANY, a
Delaware corporation,

Defendants

STIPULATION OF SETTLEMENT

This Stipulation of Settlement is made by the Parties (as defined in §2.3) with respect to the above captioned cases and certain Related Cases pending elsewhere (as defined in §1.2) on terms and conditions herein set forth, subject to approval of the Court.

GENERAL

§1.1 In the O'Daniel action, above captioned, plaintiffs sue on their own behalf and on behalf of past and present holders of the common stock of defendant Commonwealth United Corporation ("CUC") who

received such stock by reason of the dissolution of Berry Petroleum Company, an Arkansas corporation ("Berry-Arkansas"), which is the plaintiff in the *Berry* action, above captioned. Both these actions arise out of a certain "Plan and Agreement of Reorganization", dated as of August 20, 1968, between Berry-Arkansas and CUC ("the Berry Agreement") which was closed on or about October 31, 1968, and they are herein referred to jointly as "the Berry Cases."

- §1.2 In the Chancery Court of Ouchita County, Arkansas, First Division ("the Arkansas Court"), Berry-Arkansas is the plaintiff in a pending action, 'Io. 11,704, against CUC and the other defendant herein, Berry Petroleum Company, a Delaware corporation ("Berry-Delaware"). In the same Arkansas Court, a further action is pending against CUC and Berry-Delaware, No. 11,428, brought by Charlie S. Wilkins and others as trustees for owners of certificates of contingent interest issued under the Berry Agreement. Both said actions arise out of the Berry Agreement and are herein referred to jointly as "the Related Cases."
- §1.3 In the United States District Court for the Southern District of New York, a class action order was entered on February 2, 1972 in an action against CUC and others there pending, captioned Sherlee Land, et al., plaintiffs v. Commonwealth United Corporation, et al., defendants, Civil Action No. 69 Civ. 3726 ("the Land Action"), wherein said Court ordered that the Land Action be maintained as a class action for the benefit of all persons other than the defendants therein who at any time during the period commencing October 16, 1968 and ending August 1, 1969 acquired for value securities issued by CUC, including its common stock, its preferred stock, its debentures and its warrants, and who have sustained losses thereon as a result of wrongful acts and omissions of defendants therein ("the CUC Class"). Berry-Arkansas, the named plaintiffs in the O'Daniel action, and some or all of the persons in whose behalf said action is pleaded may be members of the CUC Class. Independent negotiations for settlement of the Land Action are presently being conducted, and if said action is settled, approval of the Court in which it is pending will be required.
- §1.4 Pursuant to a proxy statement dated February 7, 1972, CUC has held a meeting of its stockholders with respect to a "Plan of Settlement" set forth in said proxy statement, by which CUC proposes to settle a substantial portion of its outstanding obligations by primarily utilizing the

consideration from the sale of the capital stock and certain indebtedness of its wholly-owned subsidiary The Seeburg Corporation of Delaware ("Seeburg") to Seeburg Industries Inc. ("Industries") pursuant to a "Purchase Agreement" dated as of January 1, 1972, a copy of which is set forth in said proxy statement. Said sale is to be closed on a "Closing Date" determined as provided in the Purchase Agreement, but only if on or before the Closing Date all conditions necessary to consummate the Plan of Settlement have been satisfied. Pursuant to vote of the CUC shareholders, the outstanding common shares of CUC will be reverse split one for ten when the Plan of Settlement is consummated. The consummation of the Plan of Settlement by its terms is dependent upon various occurrences including the settlement of material litigation against CUC on terms similar to terms described in the Plan of Settlement, and judicial approval thereof to the extent required.

§1.5 The Parties (as defined in §2.3) have made this Stipulation of Settlement in order to effect settlement of the Berry Cases and the Related Cases as part of the consummation of the Plan of Settlement, but with suitable provision for effectuation of this settlement if the Plan of Settlement cannot be consummated. If approved by the Court pursuant to application under §4.1, settlement hereunder shall be effected by appropriate instruments to be delivered at a closing as provided in §5.1. If the Court disapproves, this Stipulation of Settlement shall for all purposes become void. In such event, no right, claim, obligation or liability of any person shall arise or be affected by this Stipulation's having been negotiated, and nothing herein contained or done hereunder will be deemed an admission or concession by any Party or will be used by anyone for any adversary purpose.

PARTIES

- §2.1 The "Initiating Parties" to this Stipulation of Settlement are CUC, Berry-Delaware, the named plaintiffs in the O'Daniel action, Berry-Arkansas and Industries as purchaser under the Purchase Agreement.
- §2.2 No class action order has yet been entered in the O'Daniel action. Nonetheless, for purposes of the settlement proposed under this Stipulation of Settlement, all persons who received shares of CUC pursuant to the Berry Agreement, Berry-Arkansas, the named plaintiffs in the O'Daniel action, the persons in whose behalf said action is pleaded, and

the persons and corporations for whose benefit the Wilkins action is pending in the Arkansas Court, are recognized by the Initiating Parties as a class and are referred to herein as "the Berry Class." Prior to or in connection with application for judicial approval of this Stipulation of Settlement, the Court will be asked to order that the O'Daniel action be maintained as a class action for the benefit of the Berry Class as defined above, that due notice be given to all members thereof, and that due opportunity be afforded to any member to exclude himself therefrom. If the Court fails to enter an order substantially to this effect, or if pursuant to such order any member of the Berry Class effectively excludes himself or itself from the Berry Class, then this Stipulation of Settlement may be voided by any of the Initiating Parties by written notice to the other Initiating Parties within ten (10) days from the date set by the Court as the last day on which any member of the Berry Class may exclude himself from said class.

§2.3 The term "Parties" refers to the Initiating Parties identified in §2.1 and the members of the Berry Class as it may be constituted by order of the Court conforming to §2.2.

THE SETTLEMENT FUND

- §3.1 To effect settlement hereunder, contributions shall be made to a "Settlement Fund" as follows:
 - (a) CUC shall make available for issuance 543,650 shares of its common stock or if issuance is effected after the one for ten reverse split, 54,365 such shares ("the Settlement Shares"), plus \$75,000 payable as provided in §5.2.
 - (b) Berry Delaware shall contribute \$250,000 payable on closing. §3.2 The Settlement Fund shall be distributed as follows:
 - (a) All expenses of settlement hereunder, including all allowances by the Court for attorneys fees and disbursements to plaintiffs' counsel in the Berry Cases and Related Cases, and the expenses of the distribution of the Settlement Shares shall be paid out of the cash in the Settlement Fund.
 - (b) The Settlement Shares and any balance in the Settlement Fund shall be distributed as provided in §5.1.
- §3.3 In consideration for settlement of litigation hereunder, each Party shall:
 - (a) Waive and release any and all right of indemnity or contribution

which he may have as against any other Party with respect to any expense or liability of any sort which he has incurred or may incur in the defense or settlement of the Berry Cases and the Related Cases or in any other action heretofore or hereafter brought with respect to any of the matters complained of in any of said cases.

- (b) Discontinue with prejudice and release all claims made in the Berry Cases and the Related Cases by each Party against any other Party.
- (c) Give a general release to CUC and each of its subsidiaries and to Berry-Delaware.
- (d) Surrender all right to participate as a member of the CUC Class in any settlement or judgment in favor of said class in the Land Action.
- §3.4 No person shall receive any distribution of Settlement Shares under this Stipulation of Settlement unless he shall first execute and deliver a sufficient release of CUC and Berry-Delaware of any and all claims and rights of action arising out of or relating to his acquisition, retention or sale of any stock or other security of CUC or of any present or former subsidiary thereof which he obtained pursuant to the terms of the Berry Agreement.

COURT APPROVAL

- §4.1 As soon as possible after the execution of this Stipulation of Settlement by the Initiating Parties, and subject to entry of a class order under §2.2, the undersigned counsel shall make application to the Court for approval under F.R.C.P. Rule 23 upon such notice to the members of the Berry Class as the Court may direct. If the settlement is approved, final judgments of this Court shall be entered dismissing the Berry Cases with prejudice.
- §4.2 Pending the making and final determination of the application tor Court approval under §4.1 and of any appeal from such determination, any Party to this Stipulation of Settlement who has recovered or hereafter recovers any judgment, or who has pleaded or hereafter pleads in any action any cause of action seeking judgment on any claim against any Party as to which he is required to give a release under this Stipulation of Settlement, shall cease all efforts to enforce such judgment and to prosecute such cause of action. If approved by the Court, each Party shall execute and deliver at the closing appropriate papers to discharge each

such judgment and discontinue and release each cause of action with prejudice and without costs.

- §4.3 At the closing the Settlement Shares and the cash in the Settlement Fund will be paid and delivered to the First National Bank of Magnolia, Arkansas, as Trustee (the "Bank") and shall be dispersed by the Bank as follows:
 - (a) The Bank shall pay jointly to the firms of Keith, Clegg and Eckert and Lester and Shults all sums awarded by order of the court as fees to the counsel for the plaintiffs.
 - (b) The fee of the Bank for acting as Trustee to distribute the Settlement Shares and the cash from the Settlement Fund and all expenses incurred by the Bank in acting as Trustee will be deducted from the cash in the Settlement Fund.
 - (c) The balance of the cash in the Settlement Fund and the Settlement Shares will be distributed by the Bank to the persons who held Certificates of Contingent Interest issued by CUC pursuant to paragraph 5.05 of the Berry Agreement, pro rata to the interest of such person as evidenced by the Certificate of Contingent Interest previously held by him and surrendered to the Bank.

CLOSING

- §5.1 Settlement hereunder shall be closed as soon as practicable after an order of the Court giving approval as provided in §4.1 becomes final and non-appealable, or in the event of appeal from such order after such aftirmances, discontinuance or dismissal of the appeal as may make such order final and no longer subject to appellate review.
- §5.2 If this settlement is closed on or after the Closing Date provided in the Purchase Agreement, the \$75,000 to be contributed to the Settlement Fund by CUC shall be paid in cash. If this settlement is closed earlier, said contribution shall be in the form of a negotiable note in the amount of \$75,000 made by CUC to the order of counsel for the plaintiffs herein. Payment of said note shall be guaranteed by Crystal Petroleum Company, parent of defendant Berry-Arkansas. Said note shall be first applied to any entitlement of counsel fees and disbursements under §3.2(a) and shall bear interest and be payable on such terms as shall make the note discountable by the guarantor's bank at face value. In all events principal and interest thereon shall be paid by CUC in full promptly and no later than tifteen (15) days after the Closing Date, and Industries guarantees CUC's obligation so to pay.

- §5.3 At the closing, certificates for shares of stock of CUC, without legend, shall be delivered, registered in such names and in such numbers of shares as shall give effect to the decision of the Court upon the proposals of plaintiffs' counsel as to how to divide the Settlement Shares among members of the Berry Class pursuant to §4.3, provided that there shall then be effective registration statements under the Securities Act of 1933 as amended, covering the Settlement Shares or the Court shall determine that the Settlement Shares are exempt from registration thereunder. Otherwise, one temporary, legended certificate for all the Settlement Shares shall be issued in the name of such person as the Court may designate to hold for the benefit of the persons entitled to participate in the distribution of Settlement Shares under said decision of the Court, which certificate shall be surrendered in exchange for definitive certificates as provided in the immediately preceding sentence when the proviso therein with respect to registration or exemption is satisfied. CUC shall use its best efforts to cause registration of such shares in connection with registration of other CUC shares pursuant to the Plan of Settlement, but shall not be required to file a separate registration for the Settlement Shares hereunder.
- §5.4 At or prior to the closing, plaintiffs shall deliver instruments satisfactory to counsel for CUC and Berry-Delaware, dismissing the Related Cases with prejudice and without costs.

Dated: Magnolia Arkansas August, 1972

LESTER and SHULTS
Ву
and
KEITH, CLEGG and ECKERT
Ву
Attorneys for plaintiffs and the Berry class
SMITH, WILLIAMS, FRIDAY, ELDREDGE & CLARK
Ву
and

TOWNLEY, UPDIKE, CARTER & RODGERS

By

Attorneys for defendant Commonwealth United Corporation

ROSE, BARRON, NASH, WILLIAMSON, CARROLL & CLAY

Ву

and

BUTLER, BINION, RICE, COOK & KNAPP

By

Attorneys for defendant Berry Petroleum Company

GOLENBOCK and BARELL

Bv

Attorneys for Seeburg Industries, Inc., as purchaser

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. M-19-95 73-Civ. 3452

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION
BERRY PETROLEUM COMPANY, an Arkansas corporation (dissolved), et al.,

Plaintiffs

v.

ADAMS & PECK, et al.,

Defendants

ORDER

This matter is before the Court on the motion of defendants The Kleiner Bell Group, Arthur Young & Company and Allen & Company, Incorporated, for judgment dismissing the complaint, and alternatively for an order that the action may not be maintained as a class action. Defendant American Stock Exchange has filed a motion to dismiss the complaint under Rule 12(b), Fed. R. Civ. P. Plaintiffs have moved to remand the case to the district court in Texas from which it was transferred by the Judicial Panel on Multidistrict Litigation. The answers of the other defendants raise the same defenses as presented by the motions to dismiss filed on behalf of these four named defendants.

In conformity with the Memorandum Opinion filed contemporaneously herewith, it is ORDERED, ADJUDGED and DECREED as follows: The motion of the defendant American Stock Exchange to dismiss is granted and the complaint is dismissed as to that defendant.

The motion to dismiss on behalf of The Kleiner Bell Group, Arthur Young & Company and Allen & Company, Incorporated, is to be treated as a motion for summary judgment under Rule 56, Fed R. Civ. P., and summary judgment is hereby granted for those defendants and the complaint is dismissed as to them.

Judgment is granted to the remaining defendants on the pleadings and the case is dismissed as to them.

Plaintiffs' motion to remand the case to the district court in Texas is denied.

Done this 14th day of August, 1974.

/s/ Frank H. McGraden

United States District Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. M-19-95 73-Civ. 3452

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION

BERRY PETROLEUM COMPANY, an Arkansas corporation (dissolved), et al.,

Plaintiffs

v.

ADAMS & PECK, et al.,

Defendants

MEMORANDUM OPINION

Berry Petroleum Company and four of its former stockholders commenced this action (Berry II) under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) and the rules of the SEC promulgated under that Act presumably, Rule 10b-5, 17 C.F.R. 240.10b-5, and pendent common law concepts in the United States District Court for the Northern District of Texas, and the Judicial Panel on Multidistrict Litigation transferred the case to this Court. Defendants are officers, directors and agents of Commonwealth United Corporation ("CUC"), underwriters, consultants, the American Stock Exchange, and Variety Magazine. CUC is not a defendant. This suit was commenced as a class action on behalf of all persons who owned Berry common stock as of October 16, 1968 and exchanged Berry shares of CUC common stock, pursuant to a reorganization and merger agreement between Berry and CUC consummated on October 31, 1968. Plaintiffs allege that defendants violated the Federal Securities law in failing to state material facts or to correct misstatements of material facts in the Commonwealth prospectus issued on October 16, 1968, upon which Berry shareholders relied in approving the Berry-Commonwealth merger. It is also alleged that during the period commencing January 1, 1968, and ending December 31, 1969, defendants withheld material facts concerning Commonwealth's financial condition and disseminated financial information which was materially false and misleading.

Berry Petroleum Company and three of the four shareholder plaintiffs in this action, previously sued CUC in two actions in the United States

District Court for the Western District of Arkansas¹ (Berry I). These Arkansas actions also concerned the acquisition of Berry by CUC and were brought solely against CUC and a wholly-owned subsidiary as a class action on behalf of the same class sought to be represented here, i.e., Berry shareholders who exchanged Berry shares for Commonwealth shares pursuant to the reorganization and merger agreement consummated October 31, 1968. Plaintiffs in Berry I alleged breach of contractual representations and warranties concerning Commonwealth's condition at the time of the merger. These Arkansas actions were also premised on violations of the Federal Securities laws, particularly Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(2) and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and the rules of the SEC promulgated pursuant to these Acts. While the complaints have some variation, it is clear that Berry I and Berry II are in essence the same lawsuits with different defendants as targets.

The Arkansas cases were settled and the former Berry shareholders received 54,365 shares of CUC stock and \$325,000 in cash. Subsequent to settlement a class action order was entered and notice given to the former Berry shareholders. The recipients of the proceeds of the settlement were required to execute releases to CUC to prevent double recovery in the Arkansas cases and in the *Land* case, to be discussed below.

In May, 1972, the class action plaintiffs and defendants in Land v. Commonwealth (No. 69 Civ. 3726) pending before this Court entered into a stipulation of settlement. Members of the class in that action, as defined by court order of February 2, 1972, including the Berry I plaintiffs, were given notice of the settlement in Land. The Land settlement was approved by the Court and the proceeds thereof await distribution to the class pending a final determination by the Court of the allowability of certain claims.

The matter is before the Court on a motion by defendants The Kleiner Bell Group, Arthur Young & Company and Allen & Company, Incorporated, for judgment dismissing the complaint and alternatively for an order that this action may not be maintained as a class action. Defendant, American Stock Exchange, has filed a motion to dismiss the complaint under Rule 12(b), Fed. R. Civ. P.² Plaintiffs have moved to remand the

¹ J. E. O'Daniel, et al. v. CUC, et anno., C.A. No. 70-C-58; Berry Petroleum Company, et al. v. CUC, et anno., C.A. 71-C-15.

² The answers of other defendants raise the same defenses as presented by the motions to dismiss.

case to the district court in Texas from which it was transferred by the Judicial Panel on Multidistrict Litigation.

Defendant American Stock Exchange's motion is based on contentions that:

- (1) The Court lacks jurisdiction over the subject matter because the complaint contains no allegations of any conduct by this defendant which constitutes a violation of the Securities Acts.
 - (2) Venue is improper in that no act was committed in Texas.
- (3) The Court lacks personal jurisdiction of this defendant in that the service was invalid since venue was not proper.
- (4) The complaint fails to state a claim upon which relief can be granted.
 - (5) The action is barred by the statute of limitations.

The Court is of the opinion that the complaint fails to state a claim against this defendant upon which relief can be granted.

The motion of defendants, The Kleiner Bell Group, Arthur Young & Company, and Allen & Company, Incorporated, to dismiss is based on these contentions:

- (1) The Berry II plaintiffs are within the Land class;
- (2) Judgments in Land are res judicata as to plaintiffs and the purported class in Berry II;
- (3) The cause of action is barred by the statute of limitations and by laches;
- (4) Plaintiffs have received the benefit of the Land settlement with knowledge of defendants' contributions and are estopped by their conduct from continuing the action.

These defendants have filed an affidavit in support of this motion and have relied on other matters before the Court outside the complaint. The Court therefore will treat the motion as one for summary judgment pursuant to Rule 56, Fed. R. Civ. P.

The initial question as recognized by the Judicial Panel in its order of transfer is the effect of the *Land* settlement on this action. This Court's order of February 2, 1972 in the *Land* case defined the class therein:

[A]ll persons . . . who at any time during the period commencing

October 16, 1968 and ending August 1, 1969 acquired for value any securities issued by Commonwealth United Corporation ("CUC") . . . and who have sustained losses thereon as a result of wrongful acts and omissions of defendants herein.

Defendants assert that the plaintiffs in this action are within the Court defined class in *Land*. Plaintiffs, however, deny this and contend that the operative date for the acquisition of Berry by CUC was outside the time period delineated by that class order.

An announcement of approval of the reorganization was made by the CUC and Berry Boards of Directors on August 3, 1968. The agreement entitled "Plan and Agreement of Reorganization," under which Berry agreed to sell substantially all of its assets to Commonwealth in exchange for securities of Commonwealth, was dated August 20, 1968.

On October 16, 1968, Berry sent to each of its stockholders a notice of special stockholders' meeting to consider approval of the plan of reorganization. This notice included the material alleged to be false on which Berry shareholders relied in approving the merger. The stockholders' meeting was held sometime after October 16, 1968 and the transaction consummated on October 31, 1968 when CUC delivered its stock to Berry for Berry assets. This CUC stock was then distributed to the Berry stockholders in return for their shares and Berry Petoleum was dissolved on October 31, 1968.

It is the contention of the plaintiffs that the effective date of the transaction is August 20, 1968, on the ground that the delivery of the stock following dissolution were only ministerial acts flowing from the August 20, 1968 contract. This contention is made despite the requirement under Arkansas Law, 64-803 Ark. Stat. (1947) Anno., that such a sale must be approved by the holders of two-thirds of the outstanding shares of the selling corporation, an event which occurred within the time frame of the class order in Land. Plaintiffs point to subsection (d) of 64-803 Ark. Stat. 1947 (Ann.) which permits the Board of Directors to abandon such a sale after stockholder approval and argue from this that the corporation acting through its Board made the final determination on the sale. While this may be true, this Court is of the opinion that the sale could not be effective until approved by the shareholders, an event which occurred after October 16, 1968. Moreover, this Court's class order defined the class as those who acquired CUC stock for value after October 16, 1968. The

CUC stock was delivered to the former Berry shareholders on October 31, 1968 in exchange for their Berry shares. The conclusion that the Berry stockholders acquired CUC shares for value after October 16, 1968 is therefore inescapable. In this Court's opinion the plaintiffs in *Berry* were included in the definition of the *Land* class.

Plaintiffs contend nevertheless they still were not members of the Land class because:

- (1) Common questions of law and fact between Land and Berry I did not predominate and the Judicial Panel on Multidistrict Litigation so found.
- (2) The Arkansas Court confirmed the Berry plaintiffs as a separate class.
- (3) The Berry class was excluded by effectively opting out of the Land class.

This Court does not view the action of the Judicial Panel on Multidistrict Litigation in refusing to transfer the Berry I action as a determination that the Berry I plaintiffs were not in the Land class. The Panel opinion and order of transfer of this case states with respect to the denial of transfer of Berry I:

The Panel denied Commonwealth motion to transfer the action to New York under Section 1407 because plaintiffs' allegations raised only limited questions of fact common to the acts of defendants alleged by plaintiffs in the transferee district and because plaintiffs had completed their discovery and were proceeding to trial.

This was not a determination that the actions were separate and unrelated.

The original order of the Panel denying transfer of Berry I recognized the overlap of the two cases when it was stated:

... The major issues in the Arkansas cases relate to a transaction separate and distinct from the later transactions emphasized by the *Land-Jennings* complaint. Although there may be some common questions of fact, the non-common issues clearly predominate.

The Berry I complaints were directed toward the sale of Berry assets, induced by false and misleading information. The Land complaint relied on the same false and misleading information as part of the fraud complained of in that action. It seems clear to this Court that the Berry plaintiffs were in fact a part of the class as defined in Land seeking relief for the same

alleged fraud and the order of the Judicial Panel did not remove them from this class.

Plaintiffs further contend that the Arkansas court recognized the existence of a separate class for the *Berry I* plaintiffs. The *Land* class order was entered on February 2, 1972. The *Land* class action was settled by a stipulation dated May 26, 1972. A class action order was entered in *Berry I* on July 26, 1972 on the motion of plaintiffs after a settlement which contemplated the entry of a class order for the purpose of implementing the settlement.

The Berry stockholders who received benefits under the Berry settlement were required to execute releases and forego recovery in Land to which they were otherwise entitled. The Berry I plaintiffs were members of the Land class and the creation of a separate class for settlement of the Berry I case did not remove them from the Land class.

Plaintiffs' further contention is that they have been effectively excluded from the *Land* settlement by an exclusion notice filed in the *Land* case which stated:

Wherefore, the plaintiffs in the Berry case and in the O'Daniel case by their attorneys of record hereby request exclusion from the "Land" class action with respect to the transaction by said parties with Commonwealth United Corporation as evidenced by the Plan.

This Court is of the opinion that counsel for a class, whether or not this determination has been made, cannot opt out for the class unless he has specific authority to do so from each member of the class and even then he would have to identify specifically by name those members for whom he is acting. Opting out is an individual right to be individually and specifically exercised and cannot be the subject of a blanket exclusion. Such a rule would create chaos in the attempted management of class actions.

Plaintiffs contend that the lack of authority to opt out is cured by the fact that most of the *Berry* shareholders accepted the settlement benefits of *Berry I* and executed the release and thereby ratified the acts of their attorneys including presumably the "opting out."

The Court is not persuaded by this argument. The issue is not double participation but rather whether there was an effective "opting out." If not, the members of the class are bound by the settlement and judgment. The acceptance of settlement benefits in *Berry I* could not cure this deficiency.

The Court finds that there was not an effective "opting out" by the Berry I class, except by the named plaintiffs in that action. The Court is of the opinion, therefore, that the Berry I class plaintiffs except the named plaintiffs therein are bound by the Land judgment and cannot maintain an action for the same acts complained of in Land. Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955); Hansberry v. Lee, 311 U.S. 32 (1940); Sam Fox Publishing Co., Inc. v. United States, 366 U.S. 683 (1961).

The situation, however, is different with respect to the named plaintiffs. It is assumed that counsel had specific authority to opt out on behalf of the named plaintiffs. The Court finds no merit in a contention that the exclusion must be personally exercised. Certainly the class member could designate an agent, here his attorney, to act for him and in the Court's opinion the act of the agent would effectively exercise the principal's right to opt out. The Court finds therefore that the named plaintiffs in Berry 1 effectively exercised their right to opt out and that they are not bound by the Land settlement. These named plaintiffs are J. E. O'Daniel, Yvonne Law, Gerland P. Patten & Co., Inc., and Berry Petroleum Company. Mc Alester Fuel Company, the other named plaintiff here, is bound by the Land settlement.

Defendants contend that these four plaintiffs cannot maintain the a on because Berry Petroleum has no standing to sue and the other three defendants are estopped to maintain the action because they accepted the benefits of the *Land* settlement. Defendants further contend that plaintiffs are barred from bringing the suit because of laches and the statute of limitations.

Defendants' contentions that Berry Petroleum has no standing to sue is based on the assertion that Berry has suffered no loss since it immediately distributed the CUC shares it received to its shareholders. Defendants point out that the market value of these shares on the day of distribution was greater than on the date of the reorganization agreement, and therefore Berry had no loss. This is borne out by the facts before the Court. While it is clear that a corporation may sue for fraud in connection with the sale of its assets as suggested by plaintiffs, the Court is of the opinion that in this case where no damages were suffered it has no standing to sue. In the cases cited by plaintiffs, the corporate plaintiff sought rescission of the transaction and a return of the assets transferred. Here plaintiffs seek money damages and it is plain that Berry Petroleum Company itself did not

suffer any since it immediately transferred the consideration it received to its stockholders and the damage resulting from the decline in CUC stock was to these stockholders.

This leaves the named plaintiffs, other than Berry Petroleum and McAlester Fuel Company, still able to prosecute the action since they "opted out" of the Land action, unless otherwise barred. Defendants assert as to them the defenses of estoppel, laches and the statute of limitations. The Court finds it unnecessary to deal with the estoppel and laches questions since it is of the opinion that the suit is barred by the applicable Texas statute of limitations.

It is well settled that in the absence of a limitation period in a federal law such as in the Securities Exchange Act provisions relied on here the state limitation proision will apply. Saylor v. Lindsley, 391 F. 2d 965,970 (2d Cir. 1968); Hooper v. Mountain States Securities Corp., 282 F. 2d 195, 205 (5th Cir. 1960), cert. denied 365 U.S. 814 (1961); Cope v. Anderson, 331 U.S. 461 (1947).

Texas has two limitations provisions which conceivably could be applied. See *Hendricks v. Flato Realty Investments, et al.* [1967-69 Transfer Binder], CCH Fed. Sec. L. Rep., ¶ 92,290 (S.D. Tex. 1968); *Richardson v. Salinas*, 336 F. Supp. 997 (N.D. Tex., 1972).

Article 5526, Tex Rev. Stat., provides in relevant part:

There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions of suits in court of the following description:

4. Actions for debt where the indebtedness is not evidenced by a contract in writing.

Texas has no specific limitation statute applicable to fraud suits but this article has been judicially construed to limit these actions. Richardson v. Salinas, supra.

The Texas Security Act provides a cause of action to purchasers of securities but limits the right to sue thereon in Article 581-33 thereof in the following language:

C. No person may sue under subsection A(2) more than three (3) years after the contract or more than three (3) years after the buyer in the exercise of ordinary care should have discovered that such sale was made in violation of said Subsection A(2).

Plaintiffs here assume the applicability of the three-year limitation in the Texas Blue Sky Law and argue that the suit is not time barred because the fraud on which they rely was not discovered until a time within the three-year period. Defendants argue that the action is barred whichever limitation period is applied on the ground that plaintiffs knew or should have known of the fraud complained of more than three years before the commencement of the lawsuit.

This Court is of the opinion that the limitation in Texas Blue Sky law is not applicable because it is not a true statute of limitations subject to being borrowed and applied to analogous causes of action. This Court is of the view that the limitation period in the Texas Blue Sky law is a limitation on the right and as such is applicable only to actions brought under that statute.

The Texas Blue Sky law is modeled after §§ 12 and 13 of the Securities Act of 1933, 15 U.S.C.§§ 771 and 77m. Richardson v. Salinas, supra.

It is clear that the limitation in the 1933 Securities Act, 15 U.S.C. 77(m) is not a general statute of limitations, but a limitation on the right created by that statute. *Pennsylvania Co. For Insurances on Lives and Granting Annuities v. Deckert, et al.*, 123 F. 2d 979 (3rd Cir. 1941).

Speaking of Section 12 of the Securities Act of 1933, the Court held the limitation to be on the right created by the statute and said, p. 985:

We think that Section 12 creates a new cause of action which though bearing ome resemblance to the old common law action of deceit nevertheless imposes new obligations upon the vendor of securities and gives new rights to the vendee . . . It has been held almost universally that when a statute creating a new cause of action contains in itself a statute of limitations, the limitation imposed becomes an integral part of the right of action created by the statute and so limits it that an aggrieved 1 son cannot maintain his suit after the time fixed by the statute has expired.

This Court is of the opinion that the limitation period in the Texas Blue Sky law, as in the case of the limitation in the federal statute on which it is patterned, is a limitation on the right rather than a limitation on remedies. It therefore seems inappropriate to borrow the limitation on the right created by the Texas Legislature and apply it so the right created by the Congress under § 10-b of the 1934 Securities Exchange Act, 15 U.S.C. § 78j(b).

It would be as logical, if not more so, to borrow the limitation period

from the other Federal Securities laws, such as the one contained in the 1933 Securities Act referred to above. The courts have uniformly rejected this theory despite its urging by distinguished scholars and commentators. *Klapmeier v. Peat, Marwick, Mitchell & Co.*, 363 F. Supp. 1212 (D. Minn., 1973); *Dudley v. Southeastern Factor & Finance Corp.*, 57 F.R.D. 177 (N.D. Ga. 1972); *Schaefer v. First National Bank of Lincolnwood*, 326 F. Supp. 1186 (N.D. Ill., 1970).

Even if the limitation period in the Texas Blue Sky law was viewed as a general statute of limitation subject to being borrowed and applied to analogous causes of action, this Court is of the view that the case law overwhelmingly dictates the use of the Texas statute applicable to common law fraud actions. Hooper v. Mountain States, supra; Azalea Meats, Inc. v. Muscat, 386 F. 2d 5 (5th Cir. 1967); Aboussie v. Aboussie, 441 F. 2d 150 (5th Cir. 1971); Charney v. Thomas, 372 F. 2d 97 (6th Cir. 1967); Osborne v. Mallory, 86 F. Supp. 869 (S.D. N.Y., 1949); Denny v. Performance Systems, Inc., CCH Fed. L. Rep. ¶93, 387 (M.D. Tenn., 1971); Cf. Vanderboom v. Sexton, 422 F. 2d 1233 (8th Cir. 1970), applying the limitations period of the Arkansas Blue Sky law, and Richardson v. Salinas, supra applying the limitations period in the Texas Blue Sky law.

The Court therefore holds that the Texas two-year statute of limitations Article 5526, Tex. Rev. Civ. Stat. is applicable here and that the claims of the plaintiffs are barred.³

Therefore, the Court is of the opinion that defendants are entitled to judgment and the complaint is due to be dismissed.

Frank H. McFadden

United States District Judge

Dated: August 14, 1974

³ The Court is of the opinion that the action is barred even if the three-year statute were applicable because the fraud on which the no suit is based was known or should have been known more than three years prior to the commencement of the suit. See Azalea Meats v. Muscat, supra.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 74-2588

BERRY PETROLEUM COMPANY, an Arkansas Corporation (dissolved), et al.,

Plaintiffs-Appellants,

- against -

ADAMS & PECK, et al.,

Defendants-Appellees.

DESIGNATION BY APPELLEE ARTHUR YOUNG & COMPANY OF PARTS OF RECORD NOT DESIGNATED BY APPELLANT TO BE INCLUDED IN APPENDIX

Appellee Arthur Young & Company, pursuant to Rule 30(b) of the Federal Rules of Appellate Procedure, hereby designates the following additional portions of the Record to be printed as a part of the Appendix herein:

- 1. The docket entries made in the United States District Court, Southern District of New York, in the matter entitled In Re Seeburg-Commonwealth United Litigation, Docket No. M-19-95, the case entitled Sherlee Land, Robert R. Jennings, et al., plaintiffs v. Commonwealth United Corporation, et al., defendants, 69 Civ. 3726 and the case entitled Berry Petroleum Company, et al., plaintiffs v. Adams & Peck, et al., defendants, 73 Civ. 3452.
- 2. Consolidated Second Amended Complaint as conformed to Second Pre-Trial Conference Order of May 24, 1971, filed June 16, 1971, in the Land-Jennings action.
- 3. The February 2, 1972 class action Order in the Land-Jennings action.
- 4. Notice to Present and Former Holders of Securities Issued by Commonwealth United Corporation, Ordered under date February 2, 1972.
- 5. Stipulation of Settlement, dated May 26, 1972, and filed August 25, 1972, in the *Land-Jennings* action.
- Final Order and Judgment filed December 18, 1972 in the Land-Jennings action.

- 7. Stipulation of Settlement with Arthur Young & Company, filed August 16, 1973 in the Land-Jennings action.
- 8. Final Judgment filed December 14, 1973 in the Land-Jennings action
- 9. Those portions of transcript of hearings of November 12-15, 1973 which relate to the defendants' motion for an order declaring this action not to be a class action and for judgment.
- 10. Commonwealth's Exhibit 2 to the hearing of August 1-4, 1972 in the Land-Jennings action.

Dated: New York, New York Decen. .: 24, 1974

WHITE & CASE

By Thomas J. O'Sullivan

A member of the Firm

Attorneys for Defendant-Appellee Arthur Young & Company 14 Wall Street New York, New York 10005

TO:

ALL COUNSEL OF RECORD

LIST OF CASES FILED IN S.D.N.Y. in the SEEBURG-COMMONWEALTH UNITED MERGER

DATE	PROCEEDINGS	(MULTIDISTRICT DOCKET NO.
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		per ye
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1	DOCKET NO. 37 SCHED	ULE A
į	SOUTHERN DISTRICT OF NEW YORK	
	Stephen J. Duskin, et al. v. A. Bruce Rozet, et al.	Civil Action No. 69 Civ 5735
	Sherelce Land v. Commonwealth United, et al. Petert I Warren In a/a Desphere Rev	Civil Action No. 69 Civ 3726
Notices fo	et al. Robert J.Warner, Jr. c/o Dearborn, Ber H. Igor Ansoff-Mail to &Warner, Suite 400 Commerce Union Ber Sidney Abbey, et al. v. A. Bruce Rozet, et al.	No. 69 Civ 3782
	Irving Baum v. Commonwealth United Corp., et al.	Civil Action No. 69 Civ 4340
	Benjamin B. Leinoff v. Commonwealth United Corp., et al.	Civil Action No. 69 Civ 4780
	Christian Touchtler, et al. v. Howard D. Martin, et al.	Civil Action No. 69 Civ 5022
	Charles Newarow, et al. v. A. Bruce Rozet,	Civil Action No. 69 Civ 4342

Albert Fried & Co. v. Commonwealth United Corp., et al.

United Corp., et al.

Ann Wildman v. Commonwealth United Corp.,

Robert D. Silverman, et al. v. Commonwealth

et al.

et al.

Civil Action No. 69 Civ 5736

Civil Action No. 65 Civ 5306

Civil Action

No. 69 Civ 5328

Address Change of Richard Orlikeff, c/o Orlkkoff and Tierney, to 100 W.Mo are Street, Suite 2204, Chicago, Ellinois 60603. (Tele. #(312) 372-hlhl.

DATE	PROCEEDINGS
June 25-70	Filed stipulation and order substituting Edward Gettinger & Petter Cettinger, Esqs., of 592 Fifth Ave. NYas attys. for deft.Peter Gettinger in place and stead of ReneGene Wohl, Esq. So ordered. McFadden, J. in 69 Civil 3726.
June 25-70	Filed stipulation and order substituting Edward Gettinger & Peter Gettinger, Esqs. of 592 Fifth Ave. as attys. for deft. Oliver A. Unger in place and stead of Golenbook and Barell. So ordered. McFadden, J. in 69 Civil 3726.
lune 25-70	Filed stipulation and order substituting Edward Gettinger & Peter Gettinger, Esqs. of 592 Fifth Aye. as attys. for Oliver A. Unger in place and stead of Golenbock and Barell. So ordered. McFadden, J. in 70 CIVIL 1962.
June 25-70	Filed stipulation and order substituting Edward Gettinger & Peter Gettinger, Esqs., of 592 Fifth Ave. as Attys. for Peter Gettinger in 70 CIVIL 1962.
hul 6-70	Filed Memorandum regarding definition of Class in SEEBURG cases.
ul 13-70	Filed Plaintiff's Supplemental Memorandum Regarding Definition of Class in Seaburg cases.
ul 20-70 F	iled stipulation and order substituting counsel to Paul, Weiss, Goldberg, Rifkind, Wharton & Garrison, 345 Park Ave. NY in stead of Golenbookand Barrell, as attys. for deft. Rodney W. Loeb, So ordered McFadden, J. in 69 Civil 3726. Filed First Pre-Trial Conference Order. (UNSIGNED).
-1 21. 70 1	Riled Affidavit of P. B. Konrad Knake. (in 69 Civ. 3726).
11 21-70 I	diled Memorandum of Arthur Young & Co. re: First Pre-Trial Order. (in 69 Civ. 3726).
ul 24-70 1	dia 1 40011 da - C D D - Monton
VE 27,70	Filed Memorandum of Kleiner Ball Group of deft's on procedural aspects of pittis in
	twist conference order.
ul 27,70	Filed Memorandum of Kleiner Bell Group of deft's on class definition and notice proper pltffs first pre-trial conference ordes
Jul 29-70	Filed stipulation and order of substituion of counsel(in 69 Civ. 66 N.D.Alabama) to Praeger and Sacher, 350 Fifth Ave. NY in place and stead of Golenbock and Ba So ordered. McFadden, J. (for defendant Irving Goldstein).
Jul 29-70	Filed stipulation and order of substitution of coursel (in 69 Civ. 3726 S.D.N.Y.) to Praeger and Sacher, 350 Fifth Ave. NY in place and stead of Golenbook and Barel
	McFadden, J. (for Irving Goldstein).
<u>111 29-70</u>	Filed stipulation and order of substitution of counsel (in 69 Civ. 661 N.D.Alabama) to Praeger and Sacher, 350 Fifth Ave. NY in place and stead of Golenbock and B So ordered. McFadden, J. (for deft. A. Bruce Rozet).
Jul 29-70	Filed stipulation and order of substitution of counsel in 69 Civ. 3726 SDNY. to Pra and Sacher, 350 Fifth Ave. NY in place and stead of Golenbock and Baroll.
Aug.6-70	So ordered. McFadden, J. (for defendant A. Bruce Rozet). Filed consent and order substituting Kassel Burgoyne lächels & Fose, Esqs., 315 Park Ave. N.Y. as attys. of record for deft. Gottfried von Meyern-Hohenberg. MacFa
Aug.7-70	Filed Reply Memorandum of Seeburg Plaintiff: on "First Pre-Trial Conference Order". Filed Notice of filing the Reply Memorandum of Seeburg Plaintiffs on "" " "
Aug.18-70	
Aug.18-70	
Aug. 31-70 Aug. 27-70	Filed Notice of Notion for Reargument in 70 Civ. 19hh.
Sept.1-70	Filed Motion of Plaintiffs for extension of time to file unified and consolidated amended complaint in all cases.
Sept.2-70	Filed letter and proof of service of copies on laison counsel of orders.
	Filed Aption of pltfs. for extension of time to file unified and consolidated amende

DATE	PROCEEDINGS
May 7-70	on Multidistrict Litigation requesting transfer of cases as follows: (mailed letter from Central Dist. of Calif.
ed SDNY 70-	Their No. 69-1389 WFG Clarence D.Firstenberg vs. Commonwealth United Corp., et al. 1964 Their No. 69-1339-WFG Jerry Pierce v. CommonwealthUnited Corp., et al. Recd. 5/18/7
med SDNY 70	From Northern Dist. of Alabama 1962 Their No. CA69-661 Robert R. Jennings, etc. vs. CommonwealthUnited Corp. et al From Northern Dist. of Illinois.
med SDNY 70-	1965 Their No. 69 C 2621 John Stuperitz, etal vs. Seeburg Corp., etal RECD. 5/28/70
wed 5/13/70	Their No. 3834 Mollie H. Sanders vs. Seeburg Corp. Mailed letter requesting transfer to S.D.N.Y. Case Recd. 5/13/70 Assigned #70 Civ. (Filed letter and order of Judicial Panel ret Denying motion to remand to Delaw. O Filed Memorandum of Law in 69 Civ. 5328,69Civ. 5306, 69 Civ. 1342 & 69 Civ. 5022.
May 21-7	Filed Notice of Motion. 69 Civ. 1780, 69 Civ. 1340, 69 Civ. 3782, 69 Civ. 3726, 0 Filed letter and order requesting transfer of the following case to S.D.N.Y.
gned SDNY 7	and Wallace WALNER VS. Commonwealth United Corp. (Mailed Letter asking for transfer on 6/1/70).
June 4-	70 Filed Substitution of Counsel in 70 Civ. 1962 Robert R.Jennings, etc. vs. Commonwealth United. Robert J.Warner, Jr. and Wm.N.Dearborn, of Dearborn, Berry & Warner, Nashville, Tenn. be substituted in place and stead of
June 12-	Golenbock and Barell as attys. for deft.H.Igor Ansoff. 70 Filed Letter and Order, called "Practice and Procedure Order upon Transfer pur. to 28 USC Sec.1407(a)".in cases as follows:
	70 Civ.1280 70 Civ. 938, 70 Civ. 1407, 69 Civ. 5735, 69 Civ. 3726, 69 Civ. 3782, 69 Civ. 4340, 69 Civ. 4780, 69 Civ. 5022, 69 Civ. 1342 69 Civ. 5306, 69 Civ. 5328, 70 Civ. 1963, 70 Civ. 1964, 70 Civ. 1962, 69 Civ. 5736, 70 Civ. 1965, 70 Civ. 1966, 70 Civ. 1944, 70 Civ. 2253.
June_15-7	
June 17-7	
June 17-7 June 19-	
	with affidavit of service. 70 Filed Plaintiff's Motion and Notice of Motion in (Northern Dist.Ill. No. 70 C 240 Sohn, et al vs. Commonwealth.
June 22	-70 Filed Notice of Filing the following papers70 Filed Description of Motions pending70 Filed Juggestions by Plaintiffs Stuparitz, Moss and Teitlebaum for a declaration
	that the Seeburg actions be maintained as a class action. -70 Filed NOTICE that a series of legal actions have been filed against Commonwealth, The Seeburg Corp., etal.
June 23	-70 Filed Affidavit of Mordecai Rosenfeld re: 70 Civil 1280 Julius L.Baller vs. Commonealth United Corp., etal.
June 24-	
June 25	

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	Filed Order extending time within which plaintiffs in the Federal confidence of the file their unified and correlidated arounded complaint to 9/16/70.1 which has	1,
	Filed Order that the time for filing a consolidated sector.	
	Filed stipulation and order extending the time within which to file a m spension pleading on behalf of defendants Kleiner, Bell & Co. Inc., Fire Florer, Lio Fell, Halph J. Shapiro and Marin Shapiro, to 9/10/10, FeFeddan, de	. :1
-	Filed Order greating the application of plans. for the filing of a most under Form-10(e)(3) of the Frateial Order dated 8/4)/70.1 % de filed Consolidated Scoots Areaded Complaint in 69 Giv. 3725 Element d. P. hart	**************************************
3.8.70 C	R. Manings, etc. vs. C. conventillaite Corps, etc.	
	Pologic Fund Inc. vs. Co can olth United. Filed Repost of Plantfold adjustices, et al for leave to preposed which live written into regateries in (9°Civ. 3766.	
1.11-70	Filed Requests of General Gouncet for Class Region Finitellis 165 Fe. 13 ()	
7,31,70	Decrease First Wave of Discovery. Filed Atom R of cars. Fig. 1 and a College, But Meiner, Mar 1 1 11, de Aug. Filed Atom R of cars. Fig. 1 and they rein (California 70-123) Ref. is read,	30
07-4(E2	Filed On R extending the within which the postice rust concey with, a control of the First rustrict to farmer Order to 9/15/70; forther one of the first rustrict to farmer Order to 9/15/70;	
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2.316-70	Filed Cross, The Sound Protein Conference in this lite attachment in the distance, the Court of	1
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DATE	PROCEEDINGS	Date Or Judgmen
ct.1-70	Filed Suggested Agenda for Second Pretrial Conference to be held during the week	
Oct.2-70	of October 26, 1970, submitted by Plaintiffs Jennings, et al in 69 Civ. 3726. Filed ANSWER of Defendant Sidney Kibrick in 70 Civil 275h Polaris Fund, Inc. vs.	
Oct -5-70	Commonweelth. Filed Objections of deft. Arthur Young & Co. to Pltfs' "First Wave" written Interrog: cories in 69 Civil 3726.	
Oct.5-70	Filed Femorandum of deft. Arthur Young & Co. in support of objections to pltfs	
Oct.5-70	Request for "First Waye" Written Interroga ories in 69 Civil 3726. Filed Objections of Aleiner Bell Group of Lefendants to Plaintiff's Proposed	
Oct.5-70	"First Wave" Discovery. in All Cases. Filed Proposed Agenda for Second Pre-Trial Conference of Kleiner Bell Group of	
Oct.5-70	Defendants. in All Cases. Filed Second Remorandum of Kleiner Bell Group of Defendants on Class Definition and Notice. in all cases.	
Oct.5-70		
Oct.5-70	Filed Suggestions for Second Pretrial Conference Agenda by general counsel for plaintiffs in the Seeburg Cases, by General Counsel for Plaintiffs.	
Oct.6-70	Filed Motion for Dismissal and Other Relief in 69 Civil 3726. Filed Memorandum of Arthur Young & Co. in support if its motion for dismissal and other relief in 69 Civil 3726.	-
Oct.6-70	Filed Memorandum of Deft. Arthur Young & Co. regarding the Class action order and notice in 69 Civil 3726.	
Oct.6-70	Filed Objections by deft. Louis J. Nicastro to the request of the Land-Jennings plaintiffs for leave to propound "first wave" discovery interrogatories.	
Oct.6-70	Filed Objections of deft. Coleman and Nicastro to the request of the Seeburg derivative plaintiffs for leave to propound written interrogatories.	1
Oct.7-70 Oct.9-70	Filed Deft. I.O.S.Ltd(.A.) ANSWED to consolidated Second Amended Complaint. Filed Memorandum on behalf of defts. Colemanand Nicastro in The Seeburg Cases and on behalf of deft. Nicastro in the Commonwealth United Cases pertaining to class definition.	
Oct.9-70	Filed ANSWER by Louis J. Micastro to consolidated second amended complaint in 69 Civil 3726. (Filed in 69 Civil 3726).	
	Filed Verified ANDWER to Unified Sectors Complaint in 69 Civ. 5736 Albert Fried	
	Filed Memorandum of Commonwealth and Seeburg on Definition of Class and	
Oct. 73-	Filed ANSWER to consolidated Second Amended Complaint in 69 Civil 3726. (Filed in 67 Filed ANSWER of H. Igor Arsoff to consolidated second Amended Complaint in 69 Civil 70 Filed Motion for Extension of time in ALI cases by notice on affidavit of William P. Hindman, Jr. re: to respond to Filts. First Wave of Discovery Req	V 37
Oct.1/1-	70 Filed ANSWER of deit. Fidney mibrick to consolidated second amended complaint in 69 Civil 3726.	
Oct.9-70	Filed Order extending time for deft. Ledney W. Loeb to comply with paragraph 10 (Ith Co
Oct.13-7	o Filed ORDER for All cases. Greened that time of deft. Peter Huang's time to file answer to the unified a ended con laint, pur. to First Pretrial Conference O	
Oct.13-7	to 10/15/70. McFadden, J. 70 Filed ORDER for ALL cases. The Agenda for the Second Pretrial Conference is as fo Motions directed to the conflaints, including, motion of deft. Arthur Young & C	llows:
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	vil Docket Continuation) La. F. Mr. Lile	D.
DATE	PROCEEDINGS	Judgm
ct.14-70	iled claimtiff's remorandum in opposition to motion of Investors Overseas	
t.19-70	Filed ANSWER to unified Seeburg Complaint in 69 Civil 5736. of defendants	-
ct.20-70	Morton 1. Schiowitz and Robert F. Sutmer. Filed Affidavit of Edward Nathan in opposition to motion of deft. Arthur Young & Co. in 69 Civil 3726.	
at 20-70	Filed Memorandum of Law in 69 Civil 3726.	
-1.20-70	Filed Memorandum of Commonwealth and Seeburg as to First Wave Discovery in ALL of	cses
ct 21-70	Filed ANSVER of Peter Huang to unified Seeburg complaint in 69 Civ. 5736. Filed ANSVER of Peter Huang to consolidated second amended complaint.	
h+ 21-70	Filed Affidavit of P.B.Konrad Knake in 69 Civil 3726.	
ct.23-70	Filed letter from Berkowitz, lefkovits & Patrick and REPLY NEWORANDUM submitted	
	for the Commonwealth Class Action Plaintiffs with respect to matters onthe	
	agenda for discussion at the Second Pretrial Conference to be hald Oct.27-28,1970, in New York City.	
ct.23-70	Filed ANSWER of deft. Delbert W. Coleman to complaint in 69 Civil 5736.	
	Filed ANSWER of deft. Louis J. Nicastro to complaint in 69 Civil 5736.	
0ct.23	plaintiff to inspect, etc. in 69 Civil 3726.	1
ct.23-70	Filed Request to Produce ""	
ct.26-70	Filed ANSMER of H. Igor Ansoff to the unified Scalurg complaint in 69 Civ. 5736 Filed Memorandum of Pltfs. Land, Jannings, et al in support of their proposed	1
cr.50-10	"First Wave" Interrogatoris, and in opposition to the objections thereto	
ot.26-70	of certain defendants in 69Civil 3726. Filed Reply Memorandum of Investors Overseas Bank, It. in support of notion for reargument in 70 Civil 19hh Mollie H.Sanders vs. Seeburg.	
t. 26-70	Filed Affidavit of P.B. Koured Knake in 69 Civil 3726 Sherlee Land, vs. Commonweal	th.
ct .27 70	Filed ANSUER to unified Sceburg Complaint in 69 Civil 5736 Albert Fried & Co.	
Oct .27-70	Filed ANSWER of Redney W. Loeb in 69 Civ. 3725 Sherlee Land, et al. to Second	-
	Amended Complaint.	-
Oct •23-70	Filed ANSUFR of H. IGOR ANSOFF to the Unified Seeburg Complaint in 69 C iv. 5736 Sharlee land, etc. vs. Commonwealth	
Oct.29-7	Filed stipulation and order extending deft. Commonwealth United Corp.'s time to reply or move with respect to counterclaim of deft. Kleiner, Eell & Co. to 11/16/70. So ordered. McFadden, J. in 69 Civil 3726.	
Oct -15-70	Filed Motion for extension of tire in 69 Civl 5736 Albert Fried & Co., etc. vs	
000127-10	Seeburg, and affidavit, for defendants Iouis J. Nicastro and Delbert W.	
	Coloman, to 10/22/70, to answer complaint pur. to Par. 10(a)(iv) of First	
	Pre-Trial Conference Order.	-
Ncv.12-7	Filed First Amended ANSAFR by Benjamin F. Breslauer to consolidated second	
	Amended Complaint - Communwealth Cases. in t9 Civil 3726. Filed ANSWER by Benjamin r. Preslaver to Compolidated Second Amended Complaint	
	Amended Gomplaint - Communicalth Cases. in t9 Civil 3726. Filed ANEWER by Benjamin r. Freelawer to Consolidated Second Amended Complaint Commonwealth Cases in 69 Civil 3726. Filed letter from JudicialProp. on Eultidistrict litigation, and true copy of	
Nov.16-7	Amended Gomplaint - Communicalth Cases, in t9 Civil 3726. Filed ANEWER by Benjamin r. Freelawer to Consolidated Second Amended Complaint Commonwealth Cases in 69 Civil 3726. Filed letter from Judic in Proc. on Eultidistrict litigation, and true copy of green requesting transfer of case from Central District of California, Their No. 70-1920-200 for requesting or consolidated pretrial proceedings.	
Nov.16-7	Amended Gomplaint - Communicalth Cases. in t9 Civil 3726. Filed ANEWER by Benjamin r. Freelawer to Consolidated Second Amended Complaint Commonwealth Cases in 69 Civil 3726. Filed letter from JudicialProst on Eultidistrict litigation, and true copy of order requesting transfer of case from Central District of California, Their No. 70-1920. Am fer coordinated or consolidated pretrial proceedings. NUMBER ASS ICHED SLAY 70 CP.H. CO30 Case Received 11/30/70. Filed ANEWER occupied in the deft. Commonwealth United Corp. 6 Filed ANEWER countried Sectors Communicalth United Corp. 6	r 3726.
Nov.16-70 Nov.16-70 Nov.18-70 Nov.18-70	Amended Gomplaint - Communicalth Cases. in t9 Civil 3726. Filed ANEWER by Benjamin r. Freelawer to Consolidated Second Amended Complaint Commonwealth Cases in 69 Civil 3726. Filed letter from JudicialProp. on Eultidistrict litigation, and true copy of order requesting transfer of case from Central District of California, Their Res Commonwealth Cases from Consolidated pretrial proceedings. NUMBER ASS ICHED SLAY 70 CP.H. CO30	1726.
Nov.16-70 Nov.16-70 Nov.18-70 Nov.19-70 Nov.19-70	Amended Gomplaint - Communicalth Cases. in t9 Civil 3726. Filed ANEWER by Benjamin r. Freelawer to Consolidated Second Amended Complaint Commonwealth Cases in 69 Civil 3726. Filed letter from JudicialProp. on Eultidistrict litigation, and true copy of order requesting transfer of case from Central District of California, Their No. 70-1990-AMA Terresordinated or consolidated pretrial proceedings. NUMBER ASS ICHED SLAY 70 CP.H. CO30 Case Received 11/30/70. Filed ATEM of countries in (by deft. Commonwealth United Corp.) in 69 Civ. 3 Filed ATEM of the unified Sectors Complaint by Lefts. Commonwealth United Corp. 3 Tage Scenarios. As Selaware 1. 69 3 in 11 1776.	3726.

DATE	PROCEEDINGS	1
Nov.23-70	Filed ANSWER of Gottfried von Meyern Hohenberg to the Unified Sochung Complaint 69 Civil 5736.	
	Filed ANSIER of Gottfried von Meyern Hohenberg to the Consolidated Second Ananda Complete in 69 Civil 3726.	
1'ov.27-70	Filed Notice of Produce in 69 Civil 5736 (Albert Tried & Co., ct roo vs. D. alves	
1 v.30-70	Filed AMENDED ANSWER of deft. Commonwealth United Corp. for itealf alone and for	
	no other defendant, to complaint.	_
1 7.30-70	Filed Request to Produce in All Coops.	
1-70	Filed Request for Production of Documents in 69 Civil 5736 Allest Friede Co	
1 .2-70	Filed ANSWER of deft. Trying Goldstein to the Compolicated Superior	١.
1 . 2-70	Filed ANSWER of A. Bruce Roset to Unified Steburg Complaint in 69 Civ.	
2-70	Filed AUSIER of Irving Goldstein to Unified Scaburg Complaint in 62 Civil Sons	
- 2 70	Filed AUSTER of Houard Martin to complaint in 70 Civil 5030	-
1 -:-7-70	Filed Peacest for Production and Inspection of Decuments in 69 Cly 3/6 Caro Ch	10
1 3.7-70	Filed Peauest for Production and Inspection of Documents to production	1
	of Plaintiffs! Consolidated Second Am Edda Complaint in by C.	-
The second secon	Eildd Response to Cross Claims in 69 Civil 575. of daft. Dollars V. C.	-
1 23-70	Filed Response to Cross-Claims in 69 Civil 5736. of doft. Delbart V. C. Filed Responde to Cross-Claims in 69 Civil 5736. of deft. Louis J. Lieb (20).	-
.23-70	Filed Memorandum in support of deft. Philip H. Draha's motion to disciple	
1 0-70	dated 12/2h/70 in 69 Civ. 3726.	1
30.70	Filed Motion of deft. Philip M. Brake, E. coutor, under the Jest Hill and Transcent	
	of N. Clarkson Earl Jr. decd. for protective order in College	1
30-70	Filed Motion of deft. Philip E. Drake, as Executor of the Estate was a	
,	Jr. deceased to dismiss in 69 Civil 3725.	
; . 0-70	Filed Affidavit of Philip M. Drake, Executor under the Will of H.C. and A.	i
1 63	in summert of said defend ats motion to disais	ŀ
1-71	Filed letter from Judicial Famel on Multidistrict Litigation and C. Hili	
	Transfer Order, requesting transfer of the case pending in the of Missouri, Their Mo. 70 C 580(2) Malcolm L. Strang and C	
	Corp., to the USDC. S.D.H.Y. (mailed letter). (195161 0 5)	
0.5-71	Filed Memorandum for Commonwealth United Comp. Class Accion Ilain	
1107-12	opposition to motions dated 12/24/70 filed on behalf of details and a	
	ce Evanutor of Ret of H. C. Level dr. dager i in 600 ivil 3005	
15-71	Filed Response to Request to Produce 19 69 Civil 3/20 Minutes 19 19	
1.18-71	Filed Objections of the nor bell Group of Defic to "Paguant to be to be	-
	Land Count II (Derivative) Plaintifies	
20-71	Filed Objections of aleiror Ball Group of unford at a c to st(t) St	
0.71	of Documents" of Sachary Duringting are Clarative to Filed Answer of deat. Lation 1. Clarative and tolerative transfer to Filed	
1	freduce in 69 Civ. 573 .	
7.20-71		1
	action claims in 69 viv. 1 5/36	
.,20-73.	Filed Answer of doit. 10 Ltd to Request to Produce in 69 Civil 57	
1-71	Filed Notice of Motion to compel production of Percents in (OCLURE)	
7-71	Filed AlSUFR of ofts. Fleiner, 1911 & Co. nc. and nut Kleiner to co. 1	
	22 Civil 12 Marcha I Samue va. Co note 1th Unitate Consol.	
1 17.27	of Hissouri, Eastern Div. Ho. 70 C. 500(2)) Filed transferred action from Catrel Fit. of C life heir Fo. (0 7)	
1 12-71		
	Patter of colors and and by the Control To the Control To	
17-71	letter of achnomical to be also in 69 sixth Mrs. Short I ad 64 to	
7.1-71		F
	ONLY COPY AVAILABLE	Bests
	(mailed letter) A. F. O L	

11 19-95	CASES FILED IN S.D.N.Y. IN DEERUR.G-COMMONWEALTH UNITED MERGER.	
	Frank Jun da da 2	V
	Frank itt	(
D. C. 110 Rev. C	ivil Docket Continuation	
DATE	PROCEEDINGS	Date O Judgme:
Mar.5-71	Filed letter from Orlikoff, Prins, Flamm & Susman enclosing proposed modifications	
	of the Seeburg plaintiffs to the defendants' proposed second pretrial	-
	conference order.	
Mar .8-71	Filed Notice, of Motion and supporting Memorandum of Law for an order requiring	7 3
,	the production of papers by Arthur Young & Co., Kleiner-Bell & Co., and I.O Ltd. in response to their objections to the request for discovery of document	er pi
Mar.8-71	Filed Affidavit in opposition to the request of Arthur Yaung & Co. fordiscovery of	3/ 1
mar • ·	plaintiffs documents.	J -
ar.15-71	Filed Notice of Change of Location of Certain Records in ALL CASES.	
Apr.5-71	Filed Motion for order to produce documents pur. to Rule 37 of FRCP in 69 Civ. 57	
Apr.5-71	Filed Memorandum of Deft. Arthur Young & Co. inopposition to motion for production	n
Apr.8-71	of documents in 69 Cibil 3726. Filed Motion for Order to Produce Documents pur. to Rule 37 of FRCP in 69 Civ. 57	136
Apr.8-71		30
	in 69 Civil 5736.	
Apr.8-71		
1	with notation "that the attached motion was served upon the more extensive list of parties shown in the Certificate of Service attached thereto".	
Apr. 12-7	Filed Motion to produce and reply of Seeburg Class Action Plaintiffs in 69 Civ. 5	736
- inprinter	Albert Fried & Co., et al vs. Seeburg.	
Apr.15-71	Filed Memorandum of Kleiner Bell Group of Defendants in opposition to motions	
1 20 21	to Produce (FRCP 37) of SEEBURG Class and Deriviative Plaintiffs. Filed ORDER in 70 CIVIL 1914. It is ordered, adjudged and decreed that the	
Apr.20-71	motion of defendant Investors Overseas Bankfor reargument and to vacato the	
	Order of Sequestration and alternatively for a certification of appealabilit	y
	under 28 U.S.C. p.1292(b), be, and hereby is, overruled. (done the 16th of A	pril,I
03 23	FrankH. McFadden, U.S.D.J.	36
pr.21-71	Filed Motion for Order to Produce Documents pur. to Rule 37 of FRCP in 69 Civ. 57 Filed Commonwealth United Corporation Class Action Plaintiff & Request for	1
pr.29-71	Production and Permission telespect and Copy wocuments, addressed to deft.	†
	Arthur Young 8. CO. in 69 CIVIL 3726.	
2r.29-71	Filed Commonwealth United Scrporation Class Action Plaintiffs' Request for	ļ
1	Production and Permission to inspect and copy decuments, addressed to deft.	
pr.30-71	Filed Commonwealth United Jerp Class Action Plaintiffs' Request for Production	-
1 -20-11	and Permission to Inspect and Copy Documents, addressed to off. 140 Associate	5
,	in 69 Civil 3726. Filed ANSWER of Invectors Overseas was, Ltd. to Unified Seeburg complaint in	
.or.29-71		
1 97.3-71	69 Civ. 5736. (WFGG) Filed Commonwealth United Corp. Class Action Pltfs Request for Prod. to Louis J.	
1 77.5-17	Nicastro and Delbert W. Sole an in 69 Civ. 3726	1
1'ny 3-71	Filed Commonwealth United orn. Class Action Filts . Resuest for Production, etc.	
	to Louis J. Micastro and Delicit J. Coleman in 69 Civ. 5736.	Vavas
1 17 3-71	Filed Commonwealth's Request for Production, etc. addressed to Gettfried vondeyer	
7.3-71	Filed " " " " " " " " " " " " " " " " " " "	
173-71 173-71	F.led " " " A.Bruce Rozet, Olive	
/	A.Unger, irving Goldstein, Pichard A. Jarazen, Arne Halm, Sidney Kibrick,	1
1	Howard J. Martin, Petgasia r. preslater at Theodore R. Sayers. Filed for comealth's request for from other to desta Burt Aleiner, Boll, Chapiro	Ind Fr
ay 3-71	All in 69 Civ. 3726 Sherlee Land, etc. vs. commonwealth United.	1
1	The fire of the professional and the control of the	1
1ay 3-71	to be point in a pending not tone to a determine of the Souther and Spatians of the least	letter
	of the bar to a market by the will be the common or indicated to	donad
	A-77	
<u> </u>		

DATE	PROCEEDINGS	Date Ord
lay 5-71	Filed Commonwealth United's Class Action Plainti fs' Request for Production and	
	Permission to Inspect and copy documents, addressed to defts. Peter Huang,	
	H. Igor Ansoff and Philip M. Drake, as Executor of the Estate of N.C. Earl, Jr.	
	deceased in 69 Civil 3726.	•
May 7-71	Filed Commonwealth United's Class Action Plaintiffs' Request for Production and	
	rermission to inspect and copy documents, addressed to deft. Commonwealth	
	United Corp. in 69 Civ. 3726.	
May 11-7	Filed in 69 Civil 5736 the following: (Albert Fried & Co., et ano vs. Seeburg Co	rp.)
	Answering Affidavit of William P. Hindman, Jr.	
	Answering Affidavit of Robert F. Dziurgot	
	Memorandum in opposition to motion for order escrowing Gulbransen Proceeds.	
	Memorandum in opposition to pltfs .motions for production by Commonwealth.	
	Affidavit of James J. Hughes.	
May 24-71	Filed Commonwealth United Class action Plaintiffs upplemental Memorandum	
	regarding Second Pretrial Conference Order and Regarding Objections of	
	Defendant Peter Gettinger and others to production of documents.	
lay 24-71	Filed affidavit of Plaintiffs' ounsel with respect to Discovery matters.	
May 26-71		
	connection with proposed Cavalier and Gulbransen Transactions in 69 Civ. 5736.	
May 26-71	Filed Motion for Enjoining the sale of Cavalier Corp. or for placing in escrow	
	the proceeds from its sale in 69 Civ. 5736.	
May 26-71	Filed Affidavit in support of Gulbranser and Cavalier motions in 69 Civ. 5736.	
	Filed Second Pretrial Conference Order. MacFadden, J All cases.	
June 1-71	Filed Plaintiffs' Amendment to 1/30/71 Request for Production of and Permission	
	to Inspect and copy documents, insofar as it is addressed to heodore R. Sayers	
	in 69 Civ. 3726.	İ
Jun 4-71	Filed ANSWER to consolidated Second Amended Complaint as further amended by order	
J	of the Court dated 5/24/71 in 69 C iv. 3726.	
in 15-71	Filed Statement of Claims in all cases. (Arthur Young & Co.)	
in 16-71	iled A.S.F.R of deft. Richard ling to consolidated second amended	
	complaint (class sourt only in 69 Giv. 3726.	-
in 16-71	Filed Response of Kleiner 3 11 oro.por Lefts.to four separate documentary	
	Requests of land Court 1 / las Plaintiffs. in 69 Civ. 3726.	-
Jun 16-7	Filed Consolidate SECOID AMENDED COMPLATIVE.	
	Filed Request for production to part leiner, Lichel Bell, Ralph Shapiro and Richel	ed J. 10
Jun 16-71		(
Jun 16-71		· · · · · ·
Jun16-71		-
Jun 16-71		
un 16-71	Filed " " " Peter Settinger and Mouncy W. Loeb.	
Jun 16-71	Filei " " " reter Bone, La For Ansoff and Philip N. Drake.	
Jun 16-71	Filed " " " " Filed " " A. Frice acret, Civer A. Unger, Trving Goldstein,	
MI 111	ichard A. arazen, Arme salm, long Kirr k, charl D. Bartin, Benjamin F. Breslave	./-
	and Theoders R. Sajers	-
In. 16-21	Filed Request for production to Somnouncedth United Jorp.	ļ
Jun 16-71		
Jun 17-71		
un 17-71	All in 69 Cly. 3726 operied Langet al v. Commonwealth United.	
nu 11-11	Arthur Young Co. in 65 Cav. 3726.	1100
17 71	Arthur today on. net odv. 312.	U.S.C
un 17-71	Viled Perponse to Request to Produce Arthur Frang & Co. in 69 Civ. 3726.	
un 23-71	Filed letter addressed to Ho. FrankH. McFadden from Toumley, Updike, Carter &	
	Rodgers re: typographical error in brief in action Fried-Teitellaug vs. The	
a management of the	Seeing Corp., etal Filed Affidevit of the Asst, Secy of Old Seeburg with respect to a resolution adopted at a special meeting of the Bond of Director.	
	thereof on 6/17 relating to the Cavalier	
	LIP COLUMN COLUM	i gh.
	A-78 ONLY COPY AVAILAB	1 1

D. C. 110 Rev. C	tvil Docket Continuation	, '
DATE	PROCEEDING8	Date Order Judgment N
Jun 25-71	Filed Objections to Request to Produce in 69 Civi. 3726 and all cases.	
Jul 6-71	Filed Request of Polaris Fund for the Production and Inspection of Documents of Commonwealth United Corp in 70 Civ. 1220 . 2754	
Jul 6-71	Filed Memorandum in spapert of motion for summary judgment or dismissal for	
by	Arthur Young & Co. on Count II of complaint in 69 Civ. 3726 Sherlee Land.	
	Robert R. Jennings, et al vs. Commonwealth United.	
Jul 6-71	Filed Memorandum in support of motion for summary judgment or dismissal for	
	Arthur Young on Count II of the complaint in 69 Civ. 3726 Sherlee Land, Robert R. Jennings, et al vs. Commonwealth.	
Jul 6-71	Filed Notice of Motion and Motion for summary judgment or dismissal of claim	
1	against Arthur Young & Co. in 69 Civ. 3726.	
Jul 6-71	Filed ANSWER to Count II of the Second Consolidated Amended Complaint in 69 Civ. 3	726
	Sherlee Land, et al vs. Commonwealth.	
Jul 13-73	(Filed Memorandum in opposition to motion for summary judgment or dismissal for	
1.1 13-71	Arthur Young & Co. on Count II of the complaint in 69 Civ. 3726. Filed Flaintiffs' Amended Statement of Claims against Arthur Young & Co.	
our 1)-11	under Paragraph II-37 of the Second Consolidated Amended Complaint in	
	69 Civil 3726. Sherlee Land, "obert R. Jennings, vs. Commonwealth United.	
ul 16-71	Filed Roply Affidavit of r. B. Konrad Knake in 69 Civil 3726.	
1 16-71	Filed Reply Memorandum in support of motion for summary judgment in 69C iv. 3726.	
ul 19-71	Filed Request of Polaris Fund for the Production and Inspection of Documents of	
1 16-71	Kleiner, Bell @ Co.Inc. in 70 Civil 1226 2 75 V Filed substitution of attorneys in 69 Civ. 3726 SHERIEE LAND, et al vs. Commonwealt	
11 10-11	Oppenheimer & Townsend, 90 broad St. NY 1000h is substituted as attys. for	n
	Sidney Kitrick, in place and stead of Doman, Spellman & San Filippo.	
Jul 16-71	Filed Motion of defts. Delbert W. Coleman and Louis J. Nicastro re: order	-
	requiring pltf. Albert Fried & Co. to produce and permit inspection.etc. in	
ul 21-71	69 Civil 5736.	
m 21-11	Filed Affidavit of Albert Fried, Jr. in 69 Civil 5736. Albert Fried & Co., et and vs The Seeburg Corp., et al	
ul 21-71	the same and the s	
lul 22-71	Filed Pasponse to Requests to Produce.	-
ul 21-71	Filed Letter Memorandum in 69 Civ. 3726 herlee Land, etc. vs. Commonwealth. Filed ORDER that the motions of the plaintiffs be denied. McFadden, J. D.J.	
	in 69 Civil 5736.	
Aug.3-71	Filed upplemental Response to Request to roduce in 69 Civ. 3726 Sherlee Land, et.	11/
Aug.16-7		1154
A 16 7	A.Bruce Rozet, Uliver Unger, Irving Goldstein and Sidne Ribrick in 70 Civ. Filed Request of Folaris Fund for production and inspection of documents of	12300
Aug.16-7	Burt Sleiner, Lionel Hell, Relph J. Shapiro, Lartin Shapiro and Sichard A.	.
	Freling in 70 Giv. 1226. 705	†
Aug.13-71	Filed Reply to Defendants' Motion to Produce in 690 iv. 5736 Albert Fried & Co.	
	and Merton Teitelbaum vo. Seeburg Corp.	
Aug.31-71	Filed Response of Kleiner Bell Group of Defts, to Two Separate Documentary	1175
Sept.7-71	Requests, FRCP31, of Individual Plaintiff Polaris Fund, Inc.in 70,Civ. 1228. Filed letter from Judge Frankd. McFadden (copy of letter) addressed to FrakP. D.	(177)
Po-1-11	Esq. acknowledging receipt of letter which adds the name of Hultzmann, wise	
	Sheward, 30 Broad St. MY 10 Oh, to the list of countel in the Sec-Commonwear	
	United Litigation.	1
Sept.3-7		
	E. Bauen Powell and Jean Parvin Fewell vs. Perrill, Lynch, Pierce, Fenner & Smit	h
	Inc. Central Dist. Calif. No.71-1228-F, be transferred to Southern Dist. of	
	New York, Wailed letter remesting transfer to this Court. on 9/7/71. ASSIGNED OUR CIVIL #71-3980.	i
*************	And Annual One Olivin Will-375 .	•
		•
	A-79	*

DATE	PR	Date Or Judgmen
Sept.10-71	Filed Request of Kleiner, Bell & Co.Inc. for oduction of Documents by Polaris Fund Inc. in 70 Civil 2754.	
Sep.10-71	Filed Answering Affidavit of Edward C. Kalaidjian in 69 Civ. 5736.	
Oct.13-71	E.BADEN POWELL & JEAN MARVIN POWELL VS. MERRILL LYNCH, PIERCE, FEMMER & SMITH, INC.,	
	et al. Filed Notice of Motion re: Dismiss Complaint (by Merrill Lynch)	
	Also filed: Memor andum of Law in support of Merrill Lynch's motion to dismi	88.
ct.20-71	E. Baden Powell & Jean Marvin Powell vs. Merrill Lynch, Piorce, Fenner & Smith, In	e. 71
	riled NUTICE. The non-Frankh-Mcradden, U.S.D.J. in charge of the above	
	matter, has instructed this office to advise all counsel that the motion by	
	deft. Merrill Lynch Pierce Fener & Smith, Inc. to dismiss the tar-along acti	on
	referred to above, presently set down for hearing on 11/3/71, will not be h	eard
	on that date as Judge McFadden will be unable to be in New York, and that a	time_
	for hearing this motion will be set by the judge on a date in the near future	
Oct .22-71	probably during the last week of November or the first week of December. Cl Filed certified copy.of Opinion and Order entered by the Addicial Panel - denying	erk.
000,22-11	defendants' motion to transfer sixteen actions to S.D.N.Y "An order denying	00
	transfer shall be filed in each district wherein there is a case pending in	•Б
9	which the motion for transfer has been made" cases O'Daniel, etal vs.	
	Commonwealth United, et al (W.D.Arkansas Civil No. ED71-C-15) and	
	Berry Petroleum Co. vs Commonwealth United, et al (W.D. Arkansas, Civil Action	
	No. ED-70 -C-58).	
Oct.28-71	E. BADEN POWELL, et al vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., etal.	
	Civil Action (SDNY No. 71 Civ. 3989) Filed letter requesting that the	
	name " Richard R. Clements, c/o Sprague and Clements, 1514 Crocker Citizens	
	Plaza, 611 West Sixth St., Los Angeles, Calif. 90017" be added to list of	
	counsel. (letter signed by Judge MacFadden).	
Oct -29-71		
	Fund, Inc. to Request of Kleiner, Bell & Co.Inc. to produce documents.	
Nov.3-71	SHERLEE LAND, ROBERT R. JENNINGS, et. 1 vs. COMMONNEALTH UNITED Corp. dt al. Filed	
	stipulation amending the "Commonwealth United Corp. Class Action Plaintiffs'	
	Request for Production and Permission to Inspect and Copy Documents, Address	ođ
	to Defendant Commonwealth United Corp." as indicated in 69 Civ. 3726.	
Nov.12-71	IN ALL CASES IN RE: SEEBURG-COMONNEALTH UNITED LITIGATION.	
	Filed ORDER that motion of deft. Arthur Young & Co. for summary judgment, or	
/	alternatively, for an order dismissing the complaint is overfuled. McFaddy	n, J.
	together with MEMORANDUM OPINION #38021. The alternative motions of defend	nt
.lov.12-71	Arthur Young & Co. are due to to overruled. McFadden, J. IN ALL CASES - Filed DESCOVERY ORDER NO. 1. The various requests for production	N
	of documents, objections and motions to compel production are disposed of	X
	as indicated. (See (rder). Meladden, J.	
Joy 16-21	Filed IN ALL CASES - DISCOVERY OF THE NO. 2. The documents due to be produced by	,
1.00.10-11	the defendant shall be rade available for inspection by the attorneys for	7 1
	Class Action and Privative Plaintiffs in the Land-Jennings consolidated ca	. 1
\	etc.etc. McFadden, J.	
07.19-71	Filed in 69 Civil 3726 C MMLEO LAMB, etal vs. COMACHAEALTH. Notice of Lotion and	
	Motion. by deft. Arthur Young Go. re: reargument of its motion dated 7/2/12	
	for summary judgment or dismissal of Court II of second consolidated amende	
	complaint.	
	Also filed: 11/19/71 Demorandum of deft. Arthur Young & Co. in support of	
	motion for rear went or accordant of order.	
Tov . 22-71	Filed Notice of Metion in JACK C. SKAR OFF, DON D. CRAWFORD & LINDIAN M. CRAWFORD	.5.
	COLOMBEANH UNIT b - ro: Pr . Inj. before Madadoer, J	
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	Procket Continuation	
D. C. 110 Rev. Civil	Docket Continuation	
DATE	PROCEEDINGS	Date Ord Judgment
	Filed ORDER and MEMORANDIM CPINION by McFadden. J. The motion of deft.	
	Philip M. Lrake, as Executor of the Estate of N. C. Earl, Jr., deceased, to	
	69-661 Southern Div., Northern Dist. of Alabama, is granted, and said action is hereby dismissed with respect to this defendant; further ordered that the	B
	motion of deft. Philip M. Prake, as Executor of Met. of M. Warl, Jr., decd.	
	action is dismissed with respect to this defendant.	X
Jan.6-72 F Jan.21-7	Robert B. Friedla der and Exeter International Corp and (2) Affidavit re: Failure to Plead or otherwise defend in support of Application for Entry	
	of Default of defts. George N. Friedlander, Robert B. Friedlander and Exeter International Corp., and copy of summons with proof of service.	
Jan.26-72	in 71 CIVIL 637.	
Jan.26-72	Filed deply Brief and bemorandum of law in opposition to Merrill Lynch's motion to dismiss, etc.	
Feb. 2-72	Filed Proposed Deponents and Order of their examination of Meiner Bell Group of Defendants (per third Pretrial Conference Order, IIB) in all cases.	
Feb. 3-72	Filed List of Proposed Deponents and Request for leave to propound interrogator	
Feb.3-72	Filed AMENDMENT to ORDER on Fretrial Hearing. Paragraph II-B of the I hird Fretr	la y
	of February, 1972, general counsel for plaintiffs shall file a list of prop deponents and order of examination and any requests for leave to propound	osed -
Feb.7-72	interrogatories, etc.". etc. Sc ordered. McFadden, J.	_
Feb. 7-72	in 69 Civil 3726 Sherlee Land, et al Vs. Commonwealth United Corp.	
Feb. 1-12	vs. Commonwealth United Corp., et al 69 Civ. 3726 shall be maintained as a Class Action, etc. Frank H.McFadden, Judge. (Also docketed in 69 Civil 3726	
Feb.7-72	Filed Order denying defendant's motion to dismiss the action; ordered that	
	defendant's motion to require plaintiff's to make a more definite statement their claims of fraud on the part of deft. Kerrill Lynch, is granted, etd.	
Feb.16-72	in POWELL, etal vs. MERRILL LYNCH, FERCE, FENNER & SEITH, INC., etal (Calif.No.) Filed Interrogatories addressed to Count I Plaintiffs (First Series) in 69 Civil 3726 Sherlee Land, etal vs. Commonwealth.	11-16
Feb.16-72	to Count II Plaint iffs (First Eries) in	-
Feb.16-72		
Feb.28-72	Filed Index of All Documents received from Commonwealth United Corp. and	
Mar.11,-72	riled letter from in at lainsn, enturing the complaint in 69 Civ. 3726, an acking the excluded from this action onless it is in my favor".	id
Kar.20-72	Filed URDER in 69 Civ. 3726 charles Land et al va. commonwealth united	it,
	and the perivative constant (correct) armost arthur found is dismissed	•
Her. 20-73	that Arth r Year, 's otion for your or judgment is due to be granted.	
Mar.24-72	Filed address for Brown, "cod, Ful.er, Caldwell & Ivey, as attys. for Merrill Lync, Pierce, Fenner & Saith, Inc One Liberty Flaza, NY 10006 Tel. 3h9-7500. in 71 Civ. 3989 E. baden Fowell & Jean Fervin Powell vs. Merrill Lync, Pier	
	in 71 Civ. 3989 E. Baden Powell & Sean Pervin Powell AVAILABLE	

DATE	PROCEEDINGS	Date Order or Judgment Note
Mar.30-72	Filed stipulation and order extending plaintiff's time to file their first. Amended Complaint to 4/3/72. in 71 Civil 3989. Frank McFadden, J.	
Apr.10-72	Filed - in XXXXXXXXx herlee Land, etal vs. Commonwealth - Request for exclusion of Maleolm I. Strauss.	h•
pr.11-72	Filed 2 Brown Envelopes containing Exclusion Notices received on or before 1/10, (marked #1 and #2) in 69 Civ. 3726.	172
pr.12-72	Filed Affidavit of Service by mail of Request for Exclusion by Polaris Fund,	
pr.10-72	Filed Appearance in 69 Civ. 3726 for Fidelity Capital Fund, Inc. by Peter M. Saparoff, c/c Caston, new, Motley & Holt, 82 Devonshire St., Boston, I	as: . 0210
Apr.17-72	Filed ANSWER of de t. Arne Falm to consolidated Second Amended Complaint in 69 Civil 3726 Sherlee Langetal vs. Commonwealth.	
Apr. 20-72	Filed in 71 Civil 3989 - stipulation and order extending plaintiffs time to file their first amended complaint to 5/3/72. (Filed in 71 Civ. 3989).	
Apr.21,-72	Filed in 69 Giv. 3627 - Order extending time to respond to Notice Re: Request for Exclusion from Class, of Plaintiffs Jack B. Grawford, Den E. Grawford a Lillian II. Grawford, to 5/8/72. MacFadden, J.	_
Apr.21,-72	Filed in 69 Giv. 3726 - Order extending time to respond to Notice re: Request for Exclusion from Class, or plaintiff wack B. Crawford, Fon E.Crawford and Lillian F. Crawford to 1/21/72. EcFadden, J.	
Apr.20-72	Filed Order modifying order entered on 1/16/72 - in 69 Giv. 3726 - Ordered that the alternative metion of deat. Arthur Young for summary judgment is grant and the derivative complaint (Count II) against Arthur Young is dismissed.	da
	The Sourt hereby expressly determines that there is no just reason for de and that the judgment dismissing the derivative consolaint (Count II) again	lay
Apr. 26-72	Arthur Young is 12 and final. ReFaction, J. Judgment ent. 1/20/12. En Filed in 69 Civ. 3726 - Additional Certificate of Gervice of the APPEARANCE in LAND action.	1. 1./21./7
May 11-72	Filed - in 69 Civil 3726 Sherlee Land, et al vs. Commonwealth Request for Exclusion by Jack B. Crawford, Don D. Crawford and Lilliam M. Crawford, individually and collectively.	
May 15-72	Filed - in 69 Civ. 3726 - Order extending time to respond to Notice ra: Reques	
May 17-72 Hay 23-72	Filed One (1) sealed envelope containing Exclusion Notices received after April Filed Notice of Appearance - in 69 Civ. 3726 - for Chirley Burton -	
May 23-72	(Leon, deill & Kahon, 2rt Faction, eve. E. 10016 687-5707) (Filed in 69 Filed - in 70 Civ. 18 - attplation of dismissal, with affidavit. (70 Civ. 180 is the lattern Dist. of Fisconsi, Eastern Div. number.)	10. 5170
Jun 5-72 Jun 5-72	Filed - in 60 04. 372 - 1070 - 1070 - 3. Refeden, J.	
Jun 6-72	Appended to the control of the contr	
Jun 6-12	Tited - in 62 divid 3700 - still time to the envelopments, the originals of which were projected to the second of the city of the copy of which is	e
	The state of the s	
Jan 5-72	Files - in	-
Jur. (-72	Files - in a divide 1/16 - letter for a constant, Lender, reitar & abtor	
Jun 9-77	Attraction of the control of the con	

11 19-95	CASES FILED IN S.D.N.Y. in Seeburg Commonwealth United Merger.)
D. C. 110 Rev. Civ	fil Docket Continuation . March Du Faster	1
1		hato Order
DATE	PROCEEDINGS	Judgment N
Jun 22-72	Filed in 69 Civil 3726 - Notice to take Deposition of Arne Kalm, Peter Gettinger	,
Jun 23-72	Irving Goldstein, Peter Huang, I.O.S. Ltd., Bruce Rozet and Sidney Kibrick Filed - in 69 Civ. 3726 - Amendment of Notice to take Deposition of Norton I.	
Jun 23-12	Schicwitz - withdrawn - etc.etc.	
Jun 26-72	Filed - in 69 Civ. 3726 - Second Amended Notice of Depositions.	
Jun 30-72	Filed - in 69 Civ. 3726 - Third Amended Notice of Depositions.	
Jul 21:-71	Filed Order directing that notice be given to the class and stockholders of	
	Commonwealth United Corp. for the establishment of a claims procedure and a bar date for filing claims, for the setting of a finalhearing date and for	
5	the establishment of procedures which must be followed by claimants and	
	objectors - Hearing is set before McFadden for 8/1/72 at 10 AM. in the U. S.	•
1	Courtnoise, Foley Sq. MY.	
Jul 31-78	Filed Notice of Change of Address and telephone number of the firm of	
1	Paul Vastings Janofsky & Walker to 555 South Flower St. Los Angeles,	
ij .	Calif. 22nd Floor - Tels. # (213) 1.09-1.000). in action No.69 Civil 3726.	
Aug. 8-72	Filed - in 69 Civ. 3726 - Stipulation of Concurrence. Filed One Envelope of Exhibits of Hearing before Judge McFadden, J. on 8/1/72.	
Aug. 9-72 Aug. 21-72	Filed in 69 Civ 3726Memorandum in support of proposed modificat	ions
	to order and Notice to Class Members.	·
Aug. 25-72	SHERIFE LAND ET AL VS COMMONWEALTH UNITED CORPORATION, ET AL	<u>:</u>
	Filed Notice of motion for Leave to serve cross-claimsand	
	third-Party Complaint, Filed in 69 Civ 3726	
Aug. 25-72	Sherlee Land, et al vs Commonwealth United Corp., et al Filed Memorandum of deft. Arthur Young & Co., in support of mo	tion to
	to serve cross-claims and 3rd party complaint Filed in 69 Civ	1726
Aug.25-72	Filed Afridavit of Mailing Notice attached as Exhibit A between dates 3/1/72 c	i
inaBre 7 In	3/10/72 - Also delivered and four (h) gray volumes marked EXHIBIT Po	
	tegether with an affidavit of publication in the Will Street Journal, in O	CEAS }
Aug.25-72	Filed ORDER. The terms and provisions of the stipulation of settle in in Land dated 5/26/72, and the related stipulations of concurrence and the set	
	ments contemplated thereby appear prima facie to be proper, fair, ctc.; The t	(3
1	and provisions of the Polaris Fund Stipulation of oncurrence and the both	
	contemplated tharaby of the claims of Polaris Fund ap ear pring free to the	L Cour
	fair and reasonable, etc.; with form of notice, request touroward, find the	1 3
	of claim. McFadden, J. in 69 Civ. 3726.	7
.\ug.25-72	/Filed Stipulation of Pettlement (filed 5/26/72 by McFadden) in 69 Civ. 3785.	1
!!	This stipulation is made by the Infitiating Parties both for the Dollos and prospective New Parties with respect to the case captioned ("Ind"),	
	contain Individual Cases pending and certain Related Visio finding Charles	17,
	on tower and conditions terein set forth, Subject to approved Co. The	
Aug. 25-78	Filed Stimulation of Concurrence (filed 5/20/12 by 13Faquen, 0.)	1
,	hatman Initiating Parties and Allen & Co. Inc. (103 no.) Pertyle	The second second
4ug.25-72	Filed Stipulation of Concurrence of Kleiner Bell Group of dortho(filed 5/25/73	E
	by McFaddan). in 69 Civ.3726 totucen	
1:3.25-72	1001- 2006	
A OF 3	69 Giv. 3726. Filed Stipulation of Concurrence between Initiating Parties in 69 Civ. 3725.	• !
Ang. 25-72	Piled Stirulation of Concurrence (Lines C/L) (2 by Landson)	
	Initiating Parties and Sidney Kibrick - in 69 Civ. 3/256	
Aug. 18-7	Filed letter addressed to Jeff O'Sulliven confirming the stension of time to	
3 37 20	file cross-claims. signed by Judge Frank H. McFadden. Filed stip latien and order substituting Patterson, Berkmap & Webb as attys. for	
Jug-17-72	1 : 1 : ce that the transfer of the policy that the in the interest and bridge of	
	Weissburg , Jacobs and Carst of Los Angelen, in 70 Civ. 1030.	
4 Aug. 28-72	Weissburg, Jacobs and Carst of Ios Angeles, in 70 Giv. 1030. Filled transcript of Record of Proceedings of Aug. 1, 2,3,8 h, 1970.	*
B. T.	A-83	

DATE	PROCEEDINGS	Date Order or Judgment Neted
ep.27-72	Filed Affidavit of Mailing - together with an affidavit of publication in the Wall Street Journal - and two boxes of material called computer printouts.	
Oct. 2-72	Filed ORDER that the pending motion of deft Arthur found & Co. for leave to be to	
	10/24/72 at the U.S. Courthouse, Foley Sq. NI McFadden, 6. (With Study Letter that copies have been mailed to all counsel) in 69 Civ. 3726.	dden's
ct.3-72	Filed ORDER - in 69 Civ. 5736 and 69 Civ. 2621 MD.III Albert Fried & Obellat	
	VS. The Seeburg Corporation, et al 69 Civ. 5736 shall be maintained as a class action for the benefit of all persona (excluding named defendants, the	se in
	accept the woulth and their wives and children) who held shares of the seep	ourg-
	Come at any time as indicated - This Court's order intocket no. H 19-79	1,1600
	Fab 2 1072 is bereby modified to the extent that it may be inconsistent will	th
	the femography - This matter is set for hearing at 10 AM on 11/20/12 at the	
	U.S. Courthouse Foley Sc. My re: finally determining whether the proposed	
	settlements are moner etc Notice of pendency of the Fried Action and of	
	the settlement hearing shall be given through mailing and publication as	
Oct -3-72	indicated. McFadden, J. (Also docketed in 69 Civ. 5736). Filed Stipulation of Concurrence. in 69 Civ. 736. for William C. Bartholomey.	
Oct.3-72	- With the set Concurrence for Max Miller in Cy Viv. 5100.	
Oct. 3-72	Wiled Stimulation of Voccurrence for Lillian A. Mibicek - In Oy Olvey 1900	
Uct.3-72	- Transfer - Consumonce for Michard 1. Diffeer	and
Oct.3-72	Till Chimilation of Settlement made by the Initiating farties for the most	
	New Posting with respect to actionary use of the and	
	69 Civ. 2621 No.Dis.III. and certain Related asses on terms and condition	
	as set forth herein.	
Oct.12-7	Filed Objection of The Landau Family Foundation to Proposed Settlement In Og	Civ. 3726
Uct.16-7	11: 3- 60 (3)	
Oct.16-7	2 Filed Affidavit in opposition to motion by Arthur Young incy Civ. 3/20.	ms -
22023	Anthum Young & Co. for leave to berve a jid poy.compile	
ot.16-/2	Filed in 60 Civ 3726 - Memorandum of Jack B. Urawiord, Don D. Wrawiord and	
	Lillian M. Crawford in opposition to motion of Arthur Young & Co. to serve	
	cross claims and 3rd pty. complaint. Filed Application to the Court for Allowances by Dr. Z.Udvardy in 69 Civ. 3726	
Oct.16-72	2 Filed Application to the Court for Allowances by Br. Stondard 1922 Filed - in 69 Civ. 3726 - Notice of change of address and telephone number of Oppenheimer & Toursend, Attys. for Dert. Sidney Kibrick to:	
i	20th Floor, 615 Madison Ave. New York, hi 10022 1616121 032-1000	
st.16-7	2 Filed - in 69 Civ. 3726 - Memorandum of Law of the ts. Coleman and Nicastro.	
t.16-7	of Parad in 60 C in 3726 - Affidavit of Edward C. Aslaldlan in Opposition	
:t.17-7	2 Filed - in 69 Civ. 3726 - Statement of Claim of "Byan" Etablissement de commune et Finance	
Oct.1		McFadder
(:t.19-72	time to file et all'itence. Lo Tolen les	bing the ball and
Oct.19-72	extension of time to file a granting motion of deft. H. Igor Anseft for extension of time to file a stipulation of Concurrence, to 10/21/72.	a
Oct.19-7	Filed On El granting the motion for an extension of time within water to	
	Rozet, rving sold tein, I o may I can and Gottfried von Feyern- Hohenberg,	1
	to 10/2n/72. According J.	-
Oct. 20-	72 Filed - in 69 Giv. 3726 - Stipulation of Gordannence	ettlement.
Cct.17	7-72 Filed letter from Edua J. Schliffik 18 3-63-12M 1946 t., Fittsburgh, Pa. 15221.	
	A-84	

	PROCEEDINGS	Date Order or Judgment Note
Nov.20-72	Filed Stip lation of Concurrence of Cliver a. Enger in 69 Civ. 5736 (and 69 Civ.	(21.)
Nov. 20-72	n of Peter C.R. Huang n N.D.	ш.
Nov.20-72	of Gottfried von Leyern-Hohenber . "	
lov. 20-72	of d.l.or Angel.	
Nov.21-72	Filed Notice of Notion - in 70 Sit. 5030 - re: leave to file supplemental	
MOV TELE	omplaint and to ad decondents.	
02 7	rilea notice or notion re: leave to file amended complaint in 70 Civ. 5030.	
Nov.21-72 lov.27-72	Filed stitulation of Yorkurrence between Anitiating Parties and Exeter	
	Internation 1 comp., weter most Secret S. Friedlander, Moore B.	
	Friedlander, Lorer . Poderke ; and Lawaiian Ranchos Inc. in 69 Civ. 5736 . an 69 Civ. 2731.	
ov . 27-72	Filed St , Platfor of Co curre post A. Truce Boat. in 69 Giv. 5736 and 65 Civ.	621.
6v.27-72	Filen -tipelation of the organics of Exeter Interest. Corp., Exeter Equities,	
104.51-15	Gorgeriedlender, Robert a. riedlander, som r Søderberr and Hawaiian	
	2	
Nov.27-72	Ranghes Irc. in 65 Siv. 372. Filed cripinal of an order extending time for the 1.0.5. defendants to file a Stipulation of encurrence to November 22, 1972 in 69 Civil 3726. McFedden,	J.
02 20	filed original Stipulation and Order of Transfer of 70 Civ. 5030 Walden Forert C	norotto
ov.27-72	a/k/s Pobo Barin	
Nov.28-72	Filed Affildmit of smilling of Notice to list of names and addresses.	
Nov. 2 -72	filed proof of application of tot lee to corrain persons.	
Nov. 28-72	Filed package marked "EXHIBIT 8" to the affild wit of Jon R. Huber.	
Nov. 28-72	Fired -before legadien, J. bearing held on application of Settlement of Albert	
	Fried Co. vr. Section and John Lityparitz, of all put. to Mule 23 and 23.1	FRCP.
	in 69 Civ.5736.	
	Statement of counsel for plaintiff and defendant in support of proposed	
*	rettlement. Last, moves the acceptance is the fourt of the entire record	3
	(transcript" and exhibit to bur. 1,2,161,1972 hearings, and the be-	-21-1972
	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
	her wine as should be the uprown in this setter better granted by the C	hirt.
	hearing as a part c. the record in this leading hotten granted by the C	on.
,	hearing as a part of the record in this lowers. Motion granted by the Confidential of a Colong. The Troposed pettlement applications are the confidential of the confi	on .
08 20	takes unser a 's sepert.	on .
₹ov.28-72	fixed under advisoment.	en liv. 37
Nov.29-72	filed transcript of Lecord of Proceedings of Co. in of Calober 2h, 1972, in 69 Filed in Nerk's Office at 5:50 r.l. 11/29/72 Order and Jugment in 69 Civ. 57	iv. 373
Vov.28-72 Nov.29-72 in 6901	filed transcript of Lenord of Progenities of Coming of Colober 2h, 1972. in 69 Filed in Nerk's Office at 5:50 r.l. 11/29/72 Order and Judgment in 69 Civ. 57 grad Ordered that the third tion of Settlesont dated 9/29/72 is fair, adequate	on liv. 371
Nov.29-72	taken under addisoment. Thed transcripts of decord of proceedings of somethy of valoter 2h, 1972. in 69 Filed in Nerk's Office at 5:50 r.l. 11/29/72 Order and Judgment in 69 Civ. 57 •5736 Proceed that the taged sion of settlement dated 9/29/72 is fair, adequate and removable a lift approved. The part is are directed to consummate the	liv. 372
Nov.29-72	taken under addisoment. Thed transcripts of decord of proceedings of someth, of valober 2h, 1972. in 69 Filed in Nerk's Office at 5:50 r.l. 11/29/72 Order and Judgment in 69 Civ. 57 •5736 Proceed that the triple ion of settlement dated 9/29/72 is fair, adequate and remember a rate approved. The part is are directed to compute at the settlement in accordance of the bright tien.	liv. 373
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Nov.29-72	taken under additioners. Thed transcript of denore of proceedings of soming of valober 2h, 1972. in 69 Filed in Nerk's Office at 5:50 r.l. 11/29/72 Order and Judgment in 69 Civ. 57 •5736 Ordered that the tigal ion of vettlement dated 9/29/72 is fair, adequate and remarkable a ril approved. The part is are directed to consummate the actilement in accordance at himself as a conditions of the brightnian accordance at himself as a conditions of the brightnian of the first transcript of the brightnian of the brightnian accordance at himself as a condition of the brightnian of the brig	div. 374
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Nov. 29-72 in 6901	illed transcript of Legord of Proversity, of Co. in, of Co. ober 2h, 1972. in 69 Filed in Nerk's Office at 5:50 r.l. 11/29/72 order and Juagment in 69 Giv. 57 5736 Proved that the tipl ion of Pettlement dated 9/29/72 is fair, adequate and remainable a r.s. approved. The part is are directed to communate the cettlement in accordance it is the transcript of the brightation as set forth in this crass. The relationship of the brightation of r than defendants of a sealth in its serpe, the recourt Gorporation, are seable accordance of a sealth in its serpe, the recourt Gorporation, are seable accordance of the relation of the search subject to paragraph 5 or and to further order a transcript for a sealth in the relation of the Proposed to the relation of the relation of the Proposed to the case of the proposed to the pr	int. inv. 373 inen. this or this this or this this or this t
Nov. 29-72 in 6901	iled transcript of second of Properating of on in of Calober 2h, 1972. in 69 Filed in Terk's Office at 5:50 r.i. 11/29/72 over and Jugment in 69 Giv. 57 5736 regred that the tall ion of Cettlement dated 9/29/72 is fair, adequate and reasonable at 1 approved. The part is an directed to communate the cettlement in accordance that the transcriptions of the Dismission of the Dismission of the Dismission of the Dismission of the Dismission, and cettlement in accordance that the cettlement of the Section of Certain Dismission of the Dismission, and Cettlement of the Ce	int. inv. 372 inen. this was the control of the
Nov.29-72 in 6901	iled transcript of second of stochally of so, in, of the other 2h, 1972, in 69 Filed in Terk's Office at 5:50 r.i. 11/29/72 Order and Jagment in 69 Giv. 57 grand in Terk's Office at 5:50 r.i. 11/29/72 Order and Jagment in 69 Giv. 57 grand that the tipl ion of settlement dated 9/29/72 is fair, adequate and reasonable a relative to the part has a directed to communate the settlement in accordance that he take a securitions of the brighlation of set forth in this chart. The part has reversed gainst all defendants of relative to relative the second of single training Geographics, the second geographics, and sealth and relative the second of the relative to paragraph 5 of and to intrins order a second of the relative to paragraph 5 of and to intrins order and second of the relative to paragraph 5 of and to intrins order and second or the relative to paragraph 5 of and to intrins order and second or the relative to paragraph 5 of and to intrins order and second or the relative to t	int. inv. 372 inen. this continue of the co
Nov.29-72 in 6901	iled transcript of second of Properating of on in of Calober 2h, 1972. in 69 Filed in Terk's Office at 5:50 r.i. 11/29/72 over and Jugment in 69 Giv. 57 5736 regred that the tall ion of Cettlement dated 9/29/72 is fair, adequate and reasonable at 1 approved. The part is an directed to communate the cettlement in accordance that the transcriptions of the Dismission of the Dismission of the Dismission of the Dismission of the Dismission, and cettlement in accordance that the cettlement of the Section of Certain Dismission of the Dismission, and Cettlement of the Ce	int. inv. 373 inen. this or this this or t
Nov.29-72 in 6901	illed trun evipt of becord of proceedings of our in of the ober 2h, 1972, in 69 Filed in Terk's Office at 5:50 m., 11/29/72 Ower and Jungment in 69 Giv. 57 or record that the trial ion of bettlement dated 9/29/72 is fair, adequate and reasonable and approved. The part is are directed to communate the ettlement in accordance with the trial and recording of the bilantation as set form in this way. The rate of recordings of the bilantation as set form in this way. The rate of recordings of the bilantation of rates decreased a small in this serp. The recommendation of rates of recording the record and the recording of the bilantation and the hard formation of the recording of the record of the recording of the record of the	int. on liv. 373 inn. this or ret.Frt. c.re ctlement exhibits into in
Nov.29-72 in 6901	taken under a filterent. filed transcript of Lecord of Proceedings of Co. in, of Caloter 2h, 1972, in 69 Filed in Terk's Office at 5:50 r.i. 11/29/72 Owner and Jagment in 69 Civ. 57 Filed in Terk's Office at 5:50 r.i. 11/29/72 Owner and Jagment in 69 Civ. 57 Fidered that the the 11 ion of rettlement dated 9/29/72 is fair, adquate and removable a 1 approved. The part is are directed to comparate the settlement in accordance in the new that a set conditions of the Etimalation of the Etimalation of the Etimalation of the Etimalation of the Linear defendants of the Li	int. on liv. 373 this or this or catlement exhibits into in
Nov.29-72 in 6901	filed transcript of second of proceedings of couring of Carober 2h, 1972, in 69 Filed in Terk's Office at 5:20 r.i. 11/29/72 Order and Jungment in 69 Giv. 57 5736 Fraced that the tiple in of rettlement dated 9/29/72 is fair, adequate and remonable a riseproved. The part is an directed to communate the actilement in accordance of the back that a conditions of the Displation of risms defendants of smallhill its scope, the recourt Componition, the result of actions and fails of the result of states to and relative of a fail result of a fail resu	int. on liv. 374 this or opt. Foto c. i.c. oxhibits into in
Nov.29-72 in 6901	illed transcript of Lecord of Proceedings of an in, of Grober 2h, 1972. in 69 Filed in Terk's bridge at 5:50 r.1. 11/29/72 Order and Jagment in 69 Civ. 57 •5736 •5736 recred that the tipl ion of bettlesset dated 9/29/72 is fair, adequate and reasonable a recommendation to the part and directed to communate to settlement in accommon with the transactions of the brightnian as set forth in this where the transactions of the brightnian of reasonable a reasonable to the transactions of the brightnian of reasonable a reasonable to the transactions of the brightnian of reasonable a reasonable to the transactions of the brightnian of reasonable a reasonable to the transactions of the brightnian of reasonable a reasonable to the second against all defendants of reasonable and the reasonable to the reasonable to paragraph 5 o and to Arther orders the reasonable to angle of the proposable to and to Arther orders the reasonable to angle of the proposable less in refere ion. 1. Angle of the reasonable of the reasonable of the Proposable 1. Angle of the reasonable of the reasonable of the records and transactions of the reasonable of the reasonable of the records and transactions of the reasonable of the reasona	int. on liv. 373 liv.

E		Date Orde
DATE	PROCEEDINGS	Judgment 1
entry en	timed-from previous more.	
	5. Pater Sugar - Affidavit of Sctor Munn Ciled.	
	orgition of other liming filed.	
	6. tt. ried von legern Hebenberg - Affidavit of Scttfried von Mayern Heben	erg
	7. N. Iper and for - officerate of the lower and of filed.	
	affiderit of Edward Nathan, co-counsel for Claintiffs filed.	
	Negorandum of Law Ly Commonwealth Derivative Claintiffs in support of approval filed.	
	Defendent's. (C.U.C.) testimony.	
	Proposed ettlement sinlic lin taken under advisement.	
Nov. 29-72	Filed - in 69 Civ. 3726 - in Clerk's Office at 11:10 P.H Final Order and	and the second s
69 Civ.372	() Judgment. The lan of Lettlement, as most fied in accordance withthe	
	findings recited, and the atipulation of Lettlement, along with the separat	0
	Stimulations of Communice of the Meiner Ball group of defendants, Louis	J.
	Micastro and bliney librick are finally approved at proper, fair, reasonable	e, jus
	equitable and adequate, and all objections thereto are hereby overruled,	
	Cont I of the Montoli ated Second Amended Complaint (Class Claims) is	-
	severed from this action and con-i med as a soinst deft. Arthur Young & Co,	
	Count I of the domestidated Second American Complaint (derivative claims)	
	is severed and continued as are in t CUC (as nominal, beneficiary defendant), A. ruce least, liver a. lager, rving electein, lichard A. Barazen,	
	Looney Loot, arms halm, i cr was ff, ottfried von Leyern Hohenberg,	E
	Schard D. Mortin, return Gettinger, Geodor a. Layers, leter Mang, Benjamir breslaver and J.C.S. Ltd. (A.) etc. etc. The Yourt hereby determines that	
	there is no just reason for delay in the entry of this final jumment and	Judgi
	accordingly dir cts that this this this je, ment be entered as, and be deemed, final judgment in according with this SL(1) or the FRCP. The Clerk is	TENTO
	directed to mer to gree in the Final Jud ment forthwith . Mer adden, d.	. Novi
Hov.29-72	illed stipulation and order extending deft. William C. Partolomay's time to answer, move, etc. withrespect to arended composint to 12/15/72. So order	d.
	Pelmicri, d.	-
lov.30-72	ruled stipulation and order extending deft. Louis J. idastro's time to answer plaint if's complaint to 10/20/72. So ordered beFadden, J.	
c.1-72	Before Relader, J Filed a fidevit of reter Cattinger in support of Etipulati	ion
1 69 Civ.3"	26 of Concurrence files.	-
	I the relation of the mance of there a. Sarazen il od.	1
ac.1-72	Stipulation of congresse and in conjunction withthe Stipulation of Settlemen	t
	in the Land-Jamiles v . Topuca'th inited save of I.C. Ltd. , Investors	
	Overseas an , bt ., h rion . Schick'tz and -obert butner, with agreement	
	attached, filed.	
90.1-72	V in with the time ation of Dettlement	
1 69 Civ.5	36. Sti	15
111 #69-26	Bruk. It is Forton I Schlow th and schert stater, with agreement attached	, file
	Hearing received until 10 A. Dec.19,1972 in all cases.	
Hov.29-72	Mailed copies of order and judgmant as directed by Judge McFadden to all persons in the list provided covering judgment entered 11/29/72 above.	
	in cases 69 Civ. 5736 and 69 Civ. 3726.	
Dec.5-72	Filed Affidavit of Peter Gettinger in support of stipulation of concurrence.	
Dec.6-72	Filed Stipulation of Concurrence in 69 Civ. 3726.contained in large red portfoli	0.
Dec .6-72	Filed Stipulation of Concurrence in 69 Civ. 5736 " " " "	
Dec.6-72		
110.0-12	Filed Admission of Pervice of Stipulation of Concurrence.	

DATE	PROCEEDINGS	Date Order o Judgment Not
Dec.11-72	Filed stipulation and order extending time of defts. The Seeburg Corp.,	
DEC.11-15	Commonwealth United Corp. The Seeburg Corp. of Delaware and Seeburg Indust	ries,
	Inc.'s time to answer plaintiff's Amended Complaint to 12/15/72., in	
	69 Civ. 6736. So ordered. McFadden, J.	
Dec.13-72	Filed - in 60 Civ 3726 - copy of letter from honald N. Gottlieb addressed to	
76C•17-16	CUC Transfer Co. re: nis wife's stock. Correct Address is Mrs. Karyl Gott	lieb,
	110 Miles Ave., White Plains, N.Y. 10606	
ec.13-72	Filed copy of Order filed 11/29/72 in 69 Civ. 5736and in 69 Civ. 3726	
Grand-12	with affidavit of service by mail upon Jesse 1. Arauss, Bernard V. Segal,	
	and Shaw Bornstein Scheuer Boyden & Sarmoff. on 12/8/72.	_
Dec .15-72	Filed stipulation of Concurrence of ARNE KALM - in 696 iv. 3726.	
Dec.15-72	Filed stipulation of Concurrence in 70 Civ. 1260, Julius L. Baller vs.	_
	Commonwealth United Corp. and in 69 Civ. 5736 Albert Fried & Co.etal.	
Dec.19-72	Filed ORDER that the hearing heretofore set for Tuesday, Dec. 19, 1972 is hereby	3726
	continued generally pending further order of the ourt. McFadden, Jin 69 C	of
Dec.18-72	Filed FINAL ORDER AND JUDGMENT - in 69 Civ. 3726 - The separate Stipulations Concurrence of A.Bruce Rozet, Oliver A.Unger, Irving Goldstein, Gichard A.Saraze	n.
-	etc. and ending with Lillian N. Crawford are finally approved as proper, fair	. 1
	etc, and any and all objections thereto are hereby overruled; Count I of the	e
,	Consolidated Second Amended Complaint (class claims) is severed from this act	tion
-	and continued as against deft. Arthur Young & Co. only: Count II is severed	and
	continued as against GUC. Theodore R. avers, Benjamin F. Breslauer and Howard	D.
į — — — — — — — — — — — — — — — — — — —	I be time This action and all actions consolidated therewith are dismissed as	
	against dofts A Bruce Royet Oliver A. Inger, Irving Goldstein, Ilchard A. Sara	Zelile
	Dodnor & Took Armo Kalm H. Lear Ansott, Gottliffed von Revern-nonemberka 100	V.A
8000	Cottinger Peter Huang and I.O Ltd. (S.A.) Withpresuance and without costs	•
•	eta eta The Clark is directed to enter the foregoing as a linal judgment	
1-	forthwith Mc Fadden, J. Judgment ent: 12/10/72. Ent. 12/20/72. (mailed notic	e)
Dec. 18 -72	Fig. STWATORDER AND MIDCHENT - in 69 Civ. 5736 - The Ptipulations of Poncurre	nge
Dec. 10-12	of H Tron Arsoff, William C. Bartholomay, Fichard L. Burger, Deter Interna	Lional
,	Come Garge H. Friedlander, Robert B. Friedlander, eter Wettinger, Irving	,
ie	Goldstein Peter Huang, etc. and ending with Mollie 4. Cangers, are lair,	
()	adagrate and resconshie and are an roved: The parties thereto are directed	to
	consumnate the settlement in accordance With the terms and conditions as in	idicated;
	The Clark is directed to enter the foregoing as a final judgment forthwith.	
	Net day I Indement out 12/18/72, out, 12/20/72, [mailed notice].	+30 -
Dec.18-72	I min - A Opper in 60 Civ 3726 - Ordered that parties to the Dilbulation of De	be be
	ment herein who are required to contribute cash to the Settlement fund on t	or of
1	closing Date shall make payment by certified or cashier's check to the order	etc.
	Townley, Updike, Carter & Rodgers, as trustees, on or before the closing date	shehl
!	Ordered that as of the Glosing Late defu. Commonwealth United Corporation s issue Townley, Updike, Carter & Rodgers, as trustees, shares as indicated;	progred
	that Townley, Updike, Carter & Rodgers, as trustees, shall hold all money, but the townley, Updike, Carter & Rodgers, as trustees, shall hold all money, but	ank
	deposits and shares of stock as indicated, Ordered that the reasonable feet	a god
	expenses of lownley, Updike, Carter & Rodgers for their services as trustees	
-	hereunder shall be paid by Seeburg Industries, Inc. McFadden, J. Judgment en	t. 12/18/
	nercunder Stall be part by second industries, and her stall be part by second industries.	
Dec.18-7	Ent. 12/20/72. (mailed notice). 2 Filed FINAL CRUER AND JUDNEWN. (-in Cent.Dist.Calif. No. 70-1740 R)- and in	
200.10-1	SDNY No. 71 Civ. 637. Ordered that this action is dismissed with prejudice	and with
	costs as against all diff. except Twodere R. Sayers Arthur Young & Co., a	nd Benjam
\ <u> </u>	Breslaver as to whom it shall continue; The parties to the Stipulation of	Settlemen
	and to the Stipulation of "cocurrence of pltfs, are directed to perform th	e Plan of
	Settlement as modified, the stipplat on and said Stipulation of oncurrence	e, insofar
-	as applicable to them, etc.; The Plank is directed to enter the foregoins a jud ment Forthwith, key adden, J. Judgment ent. 12/10/72. ont. 12/20/12. mil	e a final
to the Constraint	jud ment Forthwith. Resadden, J. Judgment ent. 12/16/72. ont. 12/20/12. Affide	attached)
	A-88	accaened)

D. C. 110 Rev. Civil Docket Continuation

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The Frederica

DATE	PROCEEDING8	Date Order Judgment No
Dec.11 -7	Hiled FIMAL ORDER AND JULYENT. Ordered that this action is dismissed with	
	regioning and without costs as against a lide fendants. The parties to the	
	Stimulation of Settlement and to the Stimulation of Soncurrence of the plan	ptiii
	and directed to perform the Plan of bettlement as modified, the bu pulation	01
	Cattlement and enid Stipulation of Concurrence. Insolar as applicable to the	11119
	MacFadden v. J. dement ent. 12/10/12. Ent. 12/21/	160
	(mailed notice). This as to Action 700 ivil 1200. (Docketed also in by	Tr. 512.
Dec.18-72	is a private control with different in the Dela vivil Act No. 3034/(Dektod also i	69-573
	Ordered that this actionis dismissed with prejudice and without costs as against all defendants therein. The parties to the Stipullion of Settlem	ent on
	against all defendants therein. The parties to the diplaction are	700
	and to the Stipulation of "oncurrence of the plaintiff in this action are	Judemt
	directed to perform the Flan of Settlement as modified, the Stipulation of	Ent.12
,	Settlement and said Stipulation of Concarrence, insofar as applicable to	Fint 12
	them, according to their terms. Ecfadden, J. (MCLLIE H.SANDERS V. SEEBURG	לפנו אככר
Dec.18-72	Filed FINAL ORDER A.D. JUDIANT. Order that this action (CENTRAL DIST. CAL. 70-	1220 11. /
(PULARIS	to dismissed with prejudice and Wilhout Costs as against alide lendants the	ACTII.
VS_		ant ps
(CO-MOLW)	ALTH) of the laintief in this action are directed to perform the Plan of Settler	dit do
Lucian	modified the attitude of the little of the beautiful and beautiful and the attitude of the second of	9
	incofer as applicable to them, according to their terms. McFadden, J. Judgm	ienc -
	ent. 12/18/72. Ent. 12/21/72. (Docketed also in 69 Civ. 3726).	
Dec.29-72	Filed Notice of a perl by deferdant Artuar Young &Co. (mailed 30 copies).	
Dec.29-72	Files Stipulation of "encurrence in 69 Civ. 3726 and in Central Dist. of Calif.	
	Action No. 69 Civ. 1389 H.B.	1
Jan.2-73	Fil d Notice of Presentment of Fee Petition in 690 iv. 3726. by Lawrence Walner,	+
Jan.2-73	Filed stipulation and order extending defts The Seeburg Corp., Camonwealth	
Jan . Z - 13	United Corn. The Lastery Corn. of Delaware and Deeturg Industries, inc.'s	
·	time to answer Amended Complaint to 1/14/73. So ordered, McFadden, J. in	
	1 79 Civ. 6737.	
en.2-73	filed stimulation and organizationding deft. Feter Huang's time to answer	
1	amended compaint to 12/15/77. So ordered. Mcraden. J. 11 09 Civ. 5/30.	
an.11-73	Liber other than the real real real real real real real rea	
(411-1)	the control of the state of the	
Jan. 17-73	Filed Notice of change of firm with affidavit of service - cf and on, Taelzer,	
1 1101	Woodard & Oning to Kadison, Pfaelzer, Woodard, Quinn & how	.
Jan.17-7	Filed Hetice of Appeal by Arthur Young & . (mailed cop) 9 Giv. 3627.	1
Jan. 23-7	al Filad stipulation and order extending deft. William C. Bart	1
Jan - 23-1	ensure amended complaint to 1/15/73. So ordered. McFadden, J. in Cy Siv.	5736.
Jan. 23-7	Filed stipulation and order extending deft. Peter Buang's time to answer	
- dil . 2 2-1.	amended complaint to 1/2//73. McFaduen. J. in 69 VIV. 5/30.	
Jan 22 72	Filed Order that the motion of artur Young & Co. to file cross claims and a	
Jan. 22-73	thind party complaint is pereby granted. McFadden, J. in by Civ. 3(20)	
Tan 20 73	I so at oppure that the motion of Arthur Young & Co. that the Court reconsider and	
Jan. 22-73	correct its final orders and judgments of 11/29 and 12/15/72 be and the	
	same is boundary counted. Mc adden, J. in 69 Civ. 3726.	
I-m 01 70	I we see a partition of the first figure of the first of the first	1
Jan. 211-73	First Anthur Your 's motion and iss grant class plaintiffs' motion for a	
>	conserve trial. Only those cross-delts and rd pty. delta. Who were inver	10.11
<i>'</i>	in the transactions ultimately proven by class pltfs. to have been fraudu	rem,
	is any will be involved in the second trial. This approach allows the	ourt.
	to comply with the spirit of the rederal mass and at the same time avoid	
	and by long of human and to be contained to all a parise by those cross and 174	ptv.
	dofts. involved in non-transment transactions. in 69 Gav. 5720.	
	A-89 ONLY COPY AVAILAB	LL
	OILL GO.	

DATE	PROCEEDINGS	Date Ord Judgment
an.29-73	Filed in 69 Civ. 5736 - Morton Teitelbaum vs. Seeburg. Stipulation and order	
	extending deft. Wm. C. Bartholomay's time to answer amended complaint to 1/20/15	
lan.29-73	Filed - in 69 Civ. 5736 - Morton Teitelbaum vs. Seeburg; Stipulation and order	
	Delaware and Seeburg Industries, Inc.'s time to answer amended complaint to	
Jan.31-73	Filed - in 69 Civ. 5736 - Notice of Motion Returnable at a time to be fixed by the Court re: strike allegations in paragraphs 43,44 and 45, of amended complain	nt,
	Also filed: Memorandum of Commonwealth, Seebury Seeburg Delaware and Industrie in support of motion to strike.	\$
Jan.31-73	Filed - in 70 Civ. 5030 - Notice of Motion re: cross-move of the hearing of plaintiff's motion for an order dismissing complaint, etc. Oral argument (by Townley, Updike, Carter & Rodgers,	22 E.4
eb.2-73	Also filed: Memorandum in opposition to Pltf's motion for leave to replead. Filed Notice that the appeals heretofore taken by deft. Arthur Young & Co. to the U.S. ourt of Appeals, 2nd Circuit from the order and judgment entered here on 11/29/72, will not be docketed, said appeals having been rendered moot	in
Feb.5-73	order dated 1/16/73 of the Hon. Frank H. McFadden in 69 Civ. 3720. Filed Notice of Change of Address of Richard. Orlikoff, c/o Orlikoff and Tierney	to
Feb.8-73 Feb.13-73	Filed Answer of defts. Oliver A. Unger and Peter Gettinger to cross-claims. in 69 C Filed Notice of Motion re: construction and enforcement of Section 3 of stipulat of settlement and subparagraph 3(i) of Stipulation of Concurrence of Oliver	
eb.13-73	Filed Notice of Hearing fourth Pretrial Conference to be held in all cases on 2/20/73 at 10 Am in RCCM 3001 U.S. Courthouse, Foley Equare, N.Y.	
Feb. 13-73	Filed ANSWER of Peter Buang to Amended Composint of Morton Letterbaum. (by Davis	
Feb.13-73	Filed stipulation extending deft. Peter Huang's time to answer amended complaint	
Feb.16-73	Filed Affidavit of Walden Robert Causotto in connection with the femilia motion to amond and supplement the complaint filed in his behalf in 70 Civil 50	030.
Feh.16-73	Filed Plaintiff's Reply Memorandum - in 70 Giv. 5030. Filed copy of stipulation and order of transfer - for the convenience of the	
Feb.16-73	it and it is a series and in the interest of matter. this actions half to	
Feb.20-73	transferred for All purposes to this court. So ordered.McFadden, J. Filed ANSWER of kleiner Bell Group to 3rd pty. complaint and cross-claims of deft. Arthur Young & Co. in 69 Giv. 3726.	
Feb.20-73	Filed Memorandum of Morton Teitalbaum in appesition to motion to strike.	h-
Feb.20-73	Filed ORDER approving the action of Seeburg in receiving certificates, etc. at to closing of 12/28/12; ordered that rithinlo business days after the signing of this order, Seeburg shall withdraw monies as indicated from the Irving Trust Company, Bank of New York, Franklin National Bank, First Mational City	t.y
	Ordered that the reasonable feet and expenses shall be paid by Seeburg	3
Feb.22-73	of the to unsured the e.orcontlaint. by Oppenheiser & Toursend, att	
Feb,21-73	Filed Stindution and Order substituting Townley, Updies, Carter & Rodgers shall substituted for eff. Long J. Nicartro, in place and stead of Thacher, Proff Parker, Traffey Mosi. So ordered. in Factor, in 69 Civ. 5736.	i t. l.

1	PROCEEDINGS	Date Order or Judgment Note
1-73	Filed ANSWER of Arne Kalm to 3rd pty.complaint, and cross-claims of ceft.and 3rd	
-73	pty.pltf. Arthur Young & Go. in 69 Giv. 3726. Filed ANDWER of Rodney Leeb to 3rd pty. complaint, and cross-claims of deft-3rd pltf. Arthur Young & Co. in 69 Giv. 3726.	ty.
	Filed Motice of Motion - in 69 Giv. 5328 - re: dismiss action. Returnable at a time and race to be fixed by the Court - (by deft. Commonwealth United).	
-73 -73	Filed a lide vit of service by mail of motion above. Filed - in 69 Civ. 3726 - stipulation and order substituting Townley, Updike, Carter & Rodgers as attys. for deft. Louis J. Sicestro in place and stead of Thacher, Proffitt, Prizer, Crawley & "o.d. Do ordered. McFadden, J. with effidavit	
	of service.	
Fob	28-73 Filed Order approving the Settlement, Proof of Claim; further order that T Seeburg Corp. is authorized and directed to mail true copies of Exhibits A-1 as indicated, and to publish in The Wall Street Journal a true copy of Exhibits as indicated. McFadden, J. in 69 Civ. 5736.	and b
3-73	Filed Supplemental Stipulation of Concurrence of Tiver Unger - in 69 Civil 3726	
-73	Filed ORDER that instead of the "Notice of Fending Rejection of Claim" in the	
	form annexed to the Stipulation of Settlement and referred to in par.5.3 thereof, lota shall send out notices in the form of Notice of Pending	-
	Rejection of Claim annexed to this order, which form is hereby approved, etc. etc. McFadden, J in 69 Civ. 3726.	
-73	Filed - in 70 Civ. 2253 - stip lation and order dismissing the action without p and without costs. So ordered. Ecladdon, J.	rejudiæ—
-73	Filed Stipulation of Dismissal of case No. 70 Civ. 938 Stanley Heresfang vs. Commonwealth United Corp. et al. So ordered. McFadden, J.	1
:73	Filed Stipulation of Lismiscal of case N1.70 Civ. 1407 Bernard Weber vs. Commons	wealth.
73	et al. So ordered. McFadden, J. Filed stipulation and order of Dismissal without projudice, if any, of any	+
-	attorney to make or oppose any fee application in any case in Docket N 19-95. So ordered. McFadden, J.	+
73	Order - the issues in the motion of CUC Class Action Plainting for Construction and Enforcement of ec.3.2 of the Stillation of Settlement dated 5/26/72 and	
	Construction and Enforcement of Subparagraph (c) of Paragraph 3 of Stipulation);}
	of Concurrence of Oliver A. Unger dated Nov. 10, 1973, having beend is posed of by agreement, the motion is overruled a most McFad on, J.in 69 Civ. 3726.	
Mar	1-73 Filed stigulation and order extending cross-defendant Sidney Kibrick's time to answer or move with respect to cross-complaint, to 2/28/73. So ordere	
	McFadden, J. in 69 Giv. 3726. 3 Filed - in 70 Civ. 5030 - Commonwealth's Keply Hemorandum.	
1 -/3	Filed Order concerning Application for Attorneys' Fees. McFadden, J.	
173		v. 5030s
1 1	So ordered, McFadden, J.	
2 73	Filed Affidavit of wailing the Notice attached as Exhibit A and the Proof of attached as Exhibit B - on between march 6th and March 10th, 1973. in 69 C	iv. 5735.
3_	MORTON TEIGELBAUM VI. SEEBURG CORP., etal iv. 69 Civ. 5736 - AMENTER of deft. H. Igor Ansoff to Amended Complaint of Morton Teitelbaum.	
5-7		t Sceburg
	call a meeting or its stockholders to vote on its dissolution to be held 5/ soon thereafter as can be arranged, by smalling to each tockholder or foobul./12/73 a notice in the form analyzed hereto, as indicated. Lefadden, J.	8,73, or a

Me Freder

h 19-95 CA % FIRED I FOR - SUSPENDING OF OUTLAND WHITED HEROTRE

DATE	PROCEEDINGS	Date Order Judgment No
Apr.27-7	Filed Lydic ticafor Attorney's Fees and Disbursements (by wass, deciding, Wechsler - Gerstiin, b. Stroff J. Wechsler	
Apr.27-73	Filed - in 70 Civ. 1944 Lol ie H. Sanders vs. Feebarg, and 69 Civ. 5736 Albert Ir	ied
	& Co.etal vs. Seeburg, (and another N.D. Illinois 69 Civl 2621 John Stuparitz	et_ano_
Apr.30-73	Sectors). Application for Allowance by Irving Steinman, Atty. for Pltf. Sa	iders.
- Thr. 20-12	Filed Application for Attorneys rees, Costs and Disbursements. in C.D.Calif. #70- rolaris Fund Inc. vs. Com orwealth.	1270 HPL
	Also filed: Affidavit of Robert G. Lane in support of application for Attys. f	ees. etc
	Also filed: Affi wit of Dervice by sail of Application for Attys.ees, and A	ifidavit
	in support thereof.	
1ay 1,73	Filed - in 69 Civ. 3726 Affidavit of Charles Land, Esq. in support of application for Counsel Fees and Disbursements.	
fay 1,73	Filed - in 69 Civ. 3726 Applecation for allowance of Accountants fees, disbursement	Б.
14y 1,12	and Attorneys fees of General Counsel for Derivative (Count II) Commonwealth	
	Plaintiffs.	
May 1,73	Filed - in 69 Civ. 3726 MEmo of law of Derivative Pltfs. in support of fee applicat	ion.
May 1,73	Filed - in 69 Civ. 5736 Petition for Attys. fees of Murray Drabkin, General Counsel	
May 2,73	Seeburg Derivative Claims. Filed Memo in support of application of Certain Lead Attys. for award of fees.	
	Filed in 69 Ciw. 5736.	
May 2,73	Filed - in 69 Civ. 5736 application of certain lead attys. for award of fees	
	and reimbursement of expenses.	
May 2-73	Filed - in 69 Civ. 5736 - NOTICE of filing Application of Certain Lead Counsel	
May 7-73	for fees,etc. Filed - in 69 Civ. 5736 - Affidavit of service by mail of Petition for Attorneys	-
	Fees of Murray Drabkin.	
May 7-73	Filed - in 71 Civ. 905 - Motice of Motion - re: dismiss action. time and place -	
	to be fixed by the court.	
May 7-73	Filed - in 70 Civ. 1964 - stipulation and order dismissing this action with prejudice and without costs, etc. This dismissal is without prejudice to the	-
	right, if any, of any attorney to make or oppose any fee application in any	
	case in Docket M 19-95. So ordered. McFadden, J. (Also entered in 70 Civ. 1964	1.
May 7-73	Filed - in 69 Civ. 5328 - stipulation and order of dismissal without prejudice to	
	right, if any, of any attorney to make or oppose any fee application in any c	ase
May 21-73	in Docket M 19-95. So ordered. McFadden, J. ("Iso entered in 69 Civ. 5328). Filed - in 69 Civ. 3726 - Application for Allowance of Attorneys' Fee	
143 54-13	(by Attys.for Pltfs. Goldstein, Shames & Hyde).	
Jun 7-73	Filed Application of General Counsel for the CUC CLASS for Award of Fees for Legal	and -
	Accounting Services and for reimbursement of out-of-pocket disbursements in	
June 27-73	connection with contemplated settlement with Arthur Young & Co. in 69 Civ. 372 WALDEN ROBERT CASSOTTO vs. IOTA INDISTRIES, INC., et al-Filed stip. & order	¢•
************	extending time of defts. The Hudson Bay Music Co., et al to answer to 7-20-73- NcFadden, J 73 Civ. 2381.	
July 3-73	Filed letter - 69 Civ. 3726 - from John A. Perrotta- 118 Ring St. Providence, R.I	
	Filed notice of Louis J. Nicastro, deft.of intention to purchase stock-	
	in 69 Civ. 3726 - 69 Civ. 5730	·
Aug. 7-73	Filed certified copy of Colnion a order by the Judicial Panel on Multidistrict	
	Litigation, that the action Berry Petroleum Co., et al -v- Adams & Peck, et al	·
	NO. LET. OF TOWNS, # OA 3-6579, be transferred to the SDNY with the consent of that court, assigned to the Bon. Frank B. Bor dden for coordinated or consolidate	ed
	pretrial proce d age pursuant to 20 U.S.C. Ecc. 1407.	
Aug. 10-73	Filed stip. 6 order re: concurrence of tenjamin F. Breslauer-EcFadden, J.	-
	A-92	

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CIVIL DOCKET

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DATE	FILINGSPROCEEDINGS	AMOUNT REPORTED EMOLUMENT RETURNS
ug. 13-73	Filed notice of change of firm name from Carrow Ber son Hoeniger Freitag	
	# Abboy to Bernton Hoeniger Freita: Abboy	İ
14-73	Filed order that Townley, Updike Cart r & Rogers, as Trustees, are	i
	authorized to withdraw all principal and credited interest on the Lettlete	ent
	fund new held in their name as Trustees , and said Trustees shall invest	
	sum to witherawn in a certificate of deposit issued by a major NY bank	
	selected by Tota Industries, parable no later than 12-15-73 and said	i
	Trustees shall hold said certificate of deposit and all proceeds received	
	upon maturity thereof, subject to the terms of the order dated 12-15-72-	
	McFadden, J in 69 Civ. 3726	
ug. 16-73	Filed Order that the application for approval of the August stipulation	
	is set for hearing on 11-13-73- at 10 a.m. at the USCA, Foley Equare, MY	
	H.YHcFadden,J.	
ig. 16-73	Filed notice of motion & affdvt. of deft. Iota Indus modifying procedures	5
	for distribution of settlement proceeds as set forth in the stip. of	
	settlement dated 5-26-72 - in 69 Civ. 3726	
lug. 16-73	Filed stip. of settlement with Arthur Young & Co.	
	Filed notice of election	
	Filed order transferring the case of kerry Petroleum Company v. Adams & Pec	·k
	et al-from the USDC for the No. Dut. of Texas - transferred by the	
	Judicial (and calculting prict little ation to this Jourt-Heradden, J.	
Aug. 21-73	Filed order dismissing action as to pltffs. Harry N. Popkin, Frances Popkin	1,
	Elsie Selim an, Betuy ropkin Carrison and Stephen Welch are bound by the	
	settlements in Fried on oth the class and derivative sides thereof-	
	McFadden, J.	
ep. 13-73	Filed effect. of Lobert F. Dainrict re: Tota's position with respect to fee	
	applications pending in this gulti-district docket.	
ep. 11-73	Filed defts! Iota Irdus. & Jorg orwealth United Lusic notice of notion to	
	vacand interrogs, served up in the said defts, dated 8-31-73ret, at a t	ime
	and place to be a to a the Court.	
ct/ 5-73	BERRY PETROLEUM COv- ADAMS * PECk, et al-Filed memorandum of defts.	
	Allen & Co. Inc., et al in opposition to pltffs' motion for remand for t	rial
	in.73 Civ. 3452	1741
July 30-73	Filed stip. & order extending defts' time to answer to 8-3-73-McFadden, J.	
	WALDE ROBERT CASSOTTO -v- TOTA INDUS., et al-Filed ANSWER of defts. Hudson	Ray
	Music Co.	nay .
Au 7,8-73	Filed stip. A order extending deft's (Tota) time to answer to 8-3-73-McFadd	en.J.
	A-93	

DATE	FILINGSPROCEEDINGS REPORTED IN REPORTED IN RETURNS
Aug. 14-73	BERRY PETROLEUM COv- ADAMS & PECK, et al-Filed notice to take depositions of
	Howard D. Martin
Aug. 16-73	SHERLEE LAND -v- COMMONWEALTH NITED CORFiled memorandum to all counsel re:
	stip. presented to Judge McFadden
ug. 27-73	SHERLEE LAND -v- COMMONWEALTH UNITED CORPFiled memorandum in support of Charles
1	Land's interest & fair share in the joint fee application of counsel
ug. 27-73	SHERLEE LAND -v- COMMONWEALTH UNITED CORPFiled affdvt. of Charles Bruce Land.
ep. 4-73	Filed interrogatories by pltff. to deft. Iota Indus.
ep. 4-73	Filed pltff's interrogs. to deft. Commonwealth United Music
ep. 4-73	Filed pltff's memorandum in opposition to motion of Iota Indus.
Sep. 20-73	Filed affdvt. of Edward Nathan in response to affdvt. of Charles Bruce Land
Sep. 20-73	Filed memorandum of law in support of Charles Land's interest re: fee application
Oct. 16-73	Filed notice of intention to appear of Leonard Darvin and state objections to
	proposed settlements.
Oct. 15-73	Filed deposition of John T. Corrigan-m.n. error see M 19-101
Oct. 15-73	Filed deposition of Richard J. Blumman. error see M 19-101
Oct. 16-73	Rilad deposition of Goldman Sachs & Co. by Robert L. Hoffmann.m.n. error see M 19-101
Oct. 19-73	Filed affdvt. of Stephen D. Hoffman
Det. 18-73	Filed order that a pretrial conference will be held 11-15-73-in the US Courthouse
	Foley Square, N.Y., N.Y. McFadden, J.
Det. 24-73	Filed affdvt. of Edward Nachan in response to the affdvt. of Robert F. Daiuroget-
	dated 9-10-73.
Oct. 30-73	Filed verified supplement to fee application by General Counsel for CUC class
1	and reply to IOTA'S Sept. 10-73-response thereto- in 69 Civ. 3726.
Oct. 31-73	Filed afidyt. of Charles Bruce Land in reply to certain allegations contained
1	in affdvt. of Edward Nathan, et al- in 69 Civ. 3726.
Oct. 31-73	Filed reply memorandum on behalf of Charles B. Land tomemo. of law of Edward Nathan
	in 69 Civ. 3726.
Oct. 31-73	Filed affavt. of publication in 69 Civ. 3726.
Oct. 31-73	Filed affdyt. of mailing of exhibit A- in 69 Civ. 3726.
Nov. 8-73	Filed affdvt. of Joseph F. Denninin 73-3452.
Nov. 8-73	filed affdvt. by General counsel for CUC class in support of proposed settlement with
	deft. Arthur Young & Co in 69 Civ. 3726
Nov. 8-7	Filed memorandum by Gen'l counsel for CUC class action in support of proposed
	settlement re: deft. Arthur Young & Co in 69 Civ. 3726.
	Filed pltffs' reply petroleum co's proposed discovery schedule in 69 Civ. 5736.
Nov. 8-7	Filed pittis, reply betrefeum en a stop set discovery sendant
The second second second second second	Filed memorandum re: discovery schedules - in 69 Civ. 5736.

CIVIL DOCKET

DATE		FILINGS PROCEEDINGS	MENT
Nov.	8-73	Filed reply memorandum of IOTA, Seeburg, Seeburg-Delaware & Industries- in 69 Civ.	. 5
Nov.	9-73	Filed Arthur Young & Co's response re: proposed discovery schedules-in 73 Civ, 31	152
		Filed Order that the motions of the pltff. for leave to file a supplemental	
		complaint and toacd defts. is granted that the motion of deft. Commonwealth	
		United Corp. to dismiss complaint is deniedMcFadden, J in 70 Civ. 5030	
Nov.	13-73	Filed affdvt. of Stephen D. Hoffman, on behalf of Allen & Co., et al. in 73 Civ.	345
		Filed pltffs' answer to motion of Allen & Co., et al re: order declaring action	
		not to be a class action and for judgment dismissing the complaint-in 78-3452.	
Nov.	14-73	Filed affdvt. of Robert J. Warner, Jr. re: motion of motion filed by defts.	
		Kleiner Bell Group, et al- in 73 Civ. 3452.	
Nov.	14-73	Filed memorandum of deft. Arthur Young & Co. in support of proposed settlement.	
		in 69 Civ. 3726.	
Nov.	15-73	Filed Memo-re: hearing before McFadden, J. on the issue of the proposed settlemen	t
		between the class & Arthur Young & Co. & motion of IOTA Indus. for modification	
		of the Court's prior order for distributionProposed settlement, and motions	
		for modification taken under advisement; Written orders to be entered	
		in 69 Civ. 3726.	
Nov.	20-73	WALDEN ROBERT CASSOTTO-v- COMPONWEALTH UNITED CORPFiled amended complaint-	
		in 70 Civ. 5030	
Nov.	29-73	MORTON TEITELBAUM -v- SEEBURG CORP:-Filed order dismissing the amended complaint	,
-		as to deft. William C. BartholomayMcFadden, Jin 69-5736.	
Dec.	4-73	MORTON TEITELBAUM -v- SEEBURG CORPFiled stip. & order substituting attys. for	
		deft. Delbert W. Coleman Townley Updike Carter & Rodgers of 220 E. 42nd St.	
		N.Y., NY 10017-in place & stead of Thacher, Proffitt & WoodMcFadden, J.	
Dec.	3-73	WALDEN ROBERT CASSOTTO-v-COLICIDERATE UNITED CORPFiled interrogs. to deft.	
		Commonwealth by pltff.	
Dec.	3-73	WALDEN R.CASSOTTO-v-COR CHWEALTH-Filed pltff's interrogs.	
Dec.	3-73	WALDEN R. CASE GITO-v-COME CUMEALTH-Filed pltff's notice of motion and motion	
		for a unified complaint.	
Dec.	14-73	SHERLES LAND-v- COLONE/JTH-Filed order directing payment of interim allowance	
		to co-general counsel for derivative Commonwealth pltffsMeFadden,J.	
Dec.	14-73	SHERLER LAND, et al-v COMMONNEAUTH-Filed order directing payment of interin	
		allowance to General counsel for the CUC class-NcFadden, J.	
Dec.	114-73	SHERLEE LAND, -vac . O MEANTH-Filed findings of fact & conclusions of law-	_
-		McFadden, J.	
-			

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DATE	FILINGS PROCEEDINGS
Dec. 14-73	Filed Final Judgmentasproving the settlement stipulation and the terms are
1	adjudged to we proper, fair and adequate all objections to the compromise
•	and settlement are overruled and denied in all respects-the settleing parties
	named in the within paragraphs are cirected to perform the settlement stip.
	according to the terms Heliassien, J Judgment, entered Clerk.
Jan. 3-71	Filed nation of a real of learners Darvin from Empl judgment dated 12-4-73 and
è	entered 12-14-73-mailed copy to d. Vernon Patrick, Jr Stanley J. Kaufman,
	Edward Nathan, Arthur Abbey, William P. Hindman, Jr. & P.B. Konrad Knake in 69 Civ. 3
an. 7-74	
an. 7-74	Filed supplement to petition for attys' fees with affect. of service- in 69 Civ. 5736
an. 10-74	Filed order approving agreement of American National Bank & Trust Co. of Chicago to
15	as Escrow Agent under stipulation of settlement with Arthur Young & Co. & final
£	judgment in connection the rewith in 69 Civ. 3726. McFadden, J.
n. 10-74	Filed order granting motion striking the allegations from the amended complaint as
	indicated That the amended complaint is dismissed as to deft. Seeburg Industries,
	IncMcFadden, J in 69 Civ. 5736
an. 10-74	Filed order that the class members whose class are allowed in an amount of less than
1	\$800. shall be excluded from participation in the Share Fund Distribution of
	certificates for chares distributable out of the Share Fund and payments on allowed
1	claims out of the Cash Fund be nace simultaneously after completion of claim
	allowance proceedings as the Court may hereafter orderMcFadden, J. in 69 Civ. 3726
Jan. 10-74	Filed stip. & order approvise motion for leave to file unified complaint that the
1	time for defts, to move re: unified complaint shall be extended until 30 days after
	the date of the order of the court and time to answer said complaint is extended
	until 20 days after date of this progr-etcMcFadden, Jin 70 Civ. 5030
7eb. 4-74	Jalido harvar data de de al al al de de de la competadores
	of fire name - in Telline 198
pr 9-74	Filed pltff's affdy' & notice of motion for substitution of pltff.
pr 12-74	Filed letter dated 4-6-74 from Sharles Norwood -69Civ 3726
lay 13-74	Filed order that Court yet a bearing on fee application &will expect to he
	a recent from lota ad, Inc. Corburg Ind. In McFadden, J.
fay 13-74	Filed order school ing an ention lary hearing on fee application. McFadden
	Filed order setting a for control for 6-11-74 at 10 A.M. McFadden,
my 28-7/	Fill d poler research Conference for 6-11-74 at 10 M.MMcFadden
hip 6-7/	and order if defi' and a manager from the for withdrawa! A substitution of co
1011 3-14	der a substitution of ec

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Jun 17-74	Filed notice of rotion to take deposition of Goldman, Sachs & Co
June 17-74	Filed notice of motion of one class action lead counsel that cer
	claims be rejected.
Jun 24-74	Filed order that the agreement be marked filed as of this date&
	name of the record of proceeding held on 6-13-74, relating to
	status of proceeding claims filed by Commonwealth United Cprp
	Seeburg Industries. Me Fadden, J.
Jun 24-74	filed order that hearing will be held on Aug. 27,1974 at 10 AM for the cursese of finally determining whether claims are to
	allowed in specific arounts, etc. McFadden, J.
Jun 24-74	Filed o der that a hearing will be held on Aug. 27,1974 for the a pole of finally determining what claims are to be allowed and
	what specific amounts, etc. McFadden,).
Jun 24-74	Filed 6-21-74 - James E. Vanlequipt-Deputy Clerk - agreement made
	as of May 1, 1974 by Seeburg Ind. Inc. & Delaware Corp.
Jul_8-74	File Locateion of Goldman, Sachs & Co. June 26-74.
Jul_8-74	Filed ander di moning payment of inforim allowance to certain cc
	McFadden, 1.
Jul 22-74	Filed Claimant Alex Bohm objection to the rejection of his claim.
Jul 22-74	Filed Order that Richard Orlikoff, is appointed special counsel for all persons and first, excepting Albert Fried & Co and Goldman, Sachs & Co.
Jul 22-74	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co.
Jul 22-74	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, bonds or cash to be
Jul 22-74	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stack, bonds or cash to be distributed in the settlement of the derivative claims asserted herein,
Jul 22-74	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, bonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Oriened that on or before Aug 1,74 counsel for the persons
Jul 22-74	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, wonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Griered that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of
Jul 22-74	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, bonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Oriened that on or before Aug 1,74 counsel for the persons
	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, bonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Oriected that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciary obligations of Albert Fried & Co. in this catterMcFadden, J.U.B.D.J.
Jul 22-74 Jul 29-74	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, bonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Orieced that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciar, obligations of Albert Fried & Co. in this eatterMcradden, J.U.B.D.J. Filed Order it hareby ordered that the briefing schedule is modified as
	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, wonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Oriered that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciar, obligations of Albert Fried & Co. in this exterMcFadden, J.J.B.D.J. Filed Order it hareby ordered that the briefing schedule is modified as follows: The briefs pertaining to the scope of the fiduciary obligations
Jul 29-7'1	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, bonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Orieced that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciar, obligations of Albert Fried & Co. in this catterMcradden, J.J.B.D.J. Filed Order it hareby ordered that the briefing schedule is modified as follows: The briefs pertaining to the scope of the fiduciary obligations of Albert Fried & Co will be due on Aug 8-74Briefs in response thereto will be due on Lept 6,78McFadden, J.
Jul 29-7'1	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitled to receive any of the stock, wonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Oriered that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciar, obligations of Albert Fried & Co. in this exterMcFadden, J.J.B.D.J. Filed Order it hareby ordered that the briefing schedule is modified as follows: The briefs pertaining to the scope of the fiduciary obligations
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Jul 29-7'1	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitiled to receive any of the stock, wonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Oriered that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciar, obligations of Albert Fried & Co. in this matterMcradden, J.J.B.D.J. Filed Order it hareby ordered that the briefing schedule is modified as follows: The briefs pertaining to the scope of the fiduciary obligations of Albert Fried & Co will be due on Aug 8-74Briefs in response thereto will be due on Lept 6,74McFadden, J. Filed OrderThe Count's order styled "Order directing Paymont of Interim Llowance to Certain Count's order styled "Order directing Paymont of Interim
Jul 29-7'1	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitiled to receive any of the stock, bonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Orieced that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciar, obligations of Albert Fried & Co. in this catterMcradden, J.U.B.D.J. Filed Order it hareby ordered that the briefing schedule is modified as follows: The briefs pertaining to the scope of the fiduciary obligations of Albert Fried & Co will be due on Aug 8-74Briefs in response thereto will be due on Lept 6,74McFadden, J. Filed OrderThe Court's order styled "Order directing Paymont of Interim
Jul 29-7'1	persons and firms, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitited to receive any of the stock, bonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Ordered that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciar, obligations of Albert Fried & Co. in this catterMcFadden, J.J.B.D.J. Filed Order it hereby ordered that the briefing schedule is modified as follows: The briefs pertaining to the scope of the fiduciary obligations of Albert Fried & Co will be due on Aug 8-74Briefs in response thereto will be due on dept 6,71McFadden, J. Filed OrderThe dount's order styled "Order directing Paymont of Interim Thowance to Sertain Councel* dated July 2,74 and filed on 7-8-74, making interim feed a words to Mc.Richard Orlikoff, "other Susman & Murray Drablin
Jul 29-7'1	persons and first, excepting Albert Fried & Co and Goldman, Sachs & Co. who are entitiled to receive any of the stock, bonds or cash to be distributed in the settlement of the derivative claims asserted herein, Further Oriered that on or before Aug 1,74 counsel for the persons listed in the preceding paragraph shall file a brief on the issue of the scope of the fiduciary obligations of Albert Fried & Co. in this matterMeradden, J.J.B.D.J. Filed Order it hereby ordered that the briefing schedule is modified as follows: The briefs pertaining to the scope of the fiduciary obligations of Albert Fried & Co will be due on Aug 8-74Briefs in response thereto will be due on Lept 6,74MeFadden, J. Filed OrderThe Count's order styled "Order directing Paymont of Interim Thosance to Certain Councel dated July 2,74 and filed on 7-8-74, making interim featureds to Me.Richard Orlikoff, frither Susman & Murray Drablin Loreby of Eddi cm. Caucal for the Seeberg Corp. having heretofore orally

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McFADDEN, J.

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Jul 29-74	File! Order that Gerald Lipsky, executor	of the will of Walden Robert Cassotto,
	deceased, formerly known as Bobby Darin,	is hereby substituted as pltff. in this
	actionThe Caption of this action is he	ereby amended to read.
	GERALD LIPSKY, Executor under the will o	Wallden Robert Cassotto(a/k/a Bobby Darin)
	Deceased,	Pltff,
	Vs	
	Commonwealth United Corporation(now known Commonwealth United Music, Ins.: The Hudse	n as Iota Industries, Inc.); on Bay Music Company(formerly
	known as Alley-Street Music Venture); All	ley Music Corporation; Street Songs,
	Inc.; and Charles Koppelman,	Defts.
	Within 10 days of the date of this order	an amended unified complaint shall be
i	served and filedMcFadden, d.	
Aug 5-74 Aug 28-74	(70Civ 5030-Lipsky Vs Commonwealth United (69 Civ 3726) Filed Orderthatthe claim	Corp.) AMENDED UNIFIED COMPLAINT of Mrs. Rose Fischer be allowed in the amount
		be allowed and the proffs of claims presented
	in open court andd rejected by this Or	der shall be retained by the Clerk of this
	courtThe proofs of claim & other ev	idence in spport of scuh claims allowed by
		an Transfer Co The court reserves gen. with respect to its continuing duties in
Aug 19-74	this causeMsFadden. J. (73 Civ 3452) Filed Order that the motion	of deft. American Stock Exchange to dismiss
		is dismissed as to that deft. The motion to iner Bell Group, Arthur Young & Co & Allen & Co
	is to be treated as a motion	for summary judgment is hereby granted
	for those defts and the comp	laint is dismissed as to themJudgement
		defts. on the pleadings and the case is dis- otion to remand the case to the district in
Aug 19-74	Texas is deniedMcFadde (73 Civ 3452) Filed Memorandum Opinion#1.109	en ,J. Judgment Entered-8-19-74, Clerk. 8The motion of defts. The Kleiner Bell Group
	Arthur Young & C. and Allen &	Co., Inc. to dismiss and American Stock
	Exchange motion having been c	onsideredTherefore, the Court is of the
**************************************	opinion that lefts are entit!	ed to judgment and the complaint is due to
ag 9-7h	be dismissedMeradden.d. (69 Civ 5775) Filed Notice of Filing by Ri	chard Orlikoff, Special Counsel, of
	Mes York mief of Sepair Co	namel on the Scope of The Duties of
,	Derivatice Pitff, and Sugar	tions for Remedial Action for Breach of
	thava firtha irraylar	

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PILOT S PROCELLEN

Aug 29-7h (70 Civ 5030) Filed Notice of Motion by defts. The Hudson Bay Music Co., Alley Music Corp. and Street Songs, Imc., for an order
parts of the Amended Unified Complaint. Ret. to be fixed by Court.
Aug 29-74 (70 Civ 5030) Filed Memo of Law in support of motions to strike certain allegatic in the Amended Unified Complaint.
Sept. 3-74 (70 Civ 5030) Filed Defts Tota and Commonwealth United Entertainment's
Notice of Motion for an order striking from the Amended Unified Amended Complt. certain allegatationsret. date of motion to be sat by the Court.
Sept 3-74 (70 Civ 5030) Filed Defts Iota & Commonwealth United Entertainment's
Memo. in support of motion to strike scandalous allegations. Sept 4-74 (70 Civ 5030) Filed Defts Iota Industries, Inc & Commonwealth United Music, Inc.,
schedule of documents ar to which atty-client privilege is claimed.
Sept10-74 (69 0 5736) Filed Affdyt. of Wugene German of Albert Freid & Co.
Sept 10-74 (69 C 5736) Filed Memo. of Law in reply to brief of special counsel on the scope
of the duties of a named derivative pltff.
Sept 10-74 (70 C 5030) Filed Iota's answers to pliff's interrogs.
Sept 10-74 (70 C5030) Filed Cum's answers to pltff's interrogs.
Sept 10-74 (69 C 5736) Filed Notice of Fileing of Momo. of a class lead counsel.
Sept 10-71 (59 0 5736) Filed Memo. of a class lead counsel in repponse to brief of special counsel regarding scope of derivative pltff's duties.
Sept 12-74 (73 C 31:72) Filed Notice of Appeal by Berry Petroleum o; J.E. O'Daneil: Yvonne Law; McAllester Fuel Co; & Gerland P. Patten & Co., Inc.
to the USCA from the Final Judgment entered on the 14 day of Aug. 79
(copies mailed)
Sept 12-74 (73 C3452) Filed Bond in the amount of\$250.00 for costs on appeal
. National Surety Comp #241:3179.
Sep 13-74 (69 0 57%) Filed Momo. of Joldman, Sachs & Co. In response to the objections
of Special Counsel.
Sep 13-71. (6) 0 1736) Filed Philip I. Lefkouitz's Affidavit of Service by Mail dtd.
Sep 18-76 (73 (%2) Wiled Order extending which derts, Berry Pertro. Co; J.B.
O'Danie ; Ferna's Lay, McAllester Fuel Co; and G.P. Patter & Co.
the latter examined to the 10th liay of dec-74. Meradden, U.

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FILMOS PROCESTS 465

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Sep 18-7: 69-CV	72) Filed Final Judgment on Claims There is an just reason fordelay in
	entry of a final judgment allowing, disarlowing, allowing in part, and
•	of allowing in part the claim, which have been filed by members of the
	CUC class in this actionAcradden, J. Judgment Entered 9-18-74, Clerk.
	ent9-19-74.
Sep 20-74 (69 0 5	736)Filed Brief of Gen. Counsel of r Seeburg Derivative Claims in reply to
	Brief of Sepcial Counsel on the scope of the duties of a named pltff. in a derivatice action.
Oct 29-74 (69 C	3726) Filed Order that the direction to Townley, Updike, Carter & Rodger, as.
	Trustee, in this Court's order of 12-15-72 that they shall at any meet-
	ing of shareholders vote all shares held by them under daid order on all
	matters presented for vote of shareholdersin assordance with the votes
	then cast or such matters by other shareholders voting thereon be and the
77 - 33 21 (23 0	same hereby is withdrawn, and
NOV 11-14 (13 C	of issues on appeal.
No. 11 71 (70 C	5039) Filed Pltff's Memo. in opposition to defts' motions to strike and
NOV 11-74 (70 C	affdvt. of serv. by mail.
Nov 11-74	Commonweath CasesMemorandum Optnion#41423: Awards of Counsel Fees and
	CostsTo summarize, the Court is of the opinion that the following awards
	should be made. (see attached list) The Court is of the opinion that no other or additional fees or disbursements should be awarded with respect to
	the settled Commonwealth casesAccordingly, a final judgment will be ent.
	this date in accordance with the foregoing Opinion McFadden, J.
Nov 11-74	COMMONWEALTH CASESFiled FINAL JUDGMENT AWARDING ATTYS" FEES AND
	EXPENSES The foregoing awards shall not be deemed to be received
	as feer and reimburgement of expenses by the attys. until actually paid
	to and received by them pur. to further order of this Court The Clerk
	is expressly directed to enter forthwith this Judgment as a Final Judgment
	The Court excressly retains jurisdiction to construe, administer, and
	enforce the setthments effected Pur. to Stip. of settlement dtd. 5-26-72,
	6-7-73 and the Final Sudgment awarding Attys' Fees & Expenses McFadden, J
11ov 13-7h (69 C	3726) Filed Order that fownley, Updike, Carter & Rodgers, Trustee, are heroby instructed to vote all shares held by them at the adj. meeting of share-
	holders now scheduled for Mov 14-7h, for and in favor of an adj. of meeting
	to hor 20-7hMcFadden, J.

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CIVIL D	
DATE	FILINGS PROFESCIONS REPORT
N 21 2	(70 C 5030) Filed Reply Memo. in support of motion to strike. (59 C 3725) Filed Order that Townley, Updike, Carter & Rodger, as Trustees, be and they are hereby instructed to vote all shares held by them at the adj. meeting of shareholders scheduled for 11-26-74 for and in favor of an adj. mf said meeting to 11-12-74 and refrain from voting, giving any proxies, participating at or in said shareholders meeting adj. to 11-26-74 or in any other way causing or allowing the shares held by them as Trustees to be voted or utilized at said meeting for any other purpose except the adj. thereof to 12-12-74MacFadden, J. F69 C 3726) Filed order that in conformity with prior oral orders that Townley, Updike, Carter & Rodger, as Trustees, be and hereby
	instructed to vote all shares held by them at the adj. heeting of shareholders which was scheduled and held on 12-12-74 for and
	in favor of adjournment of said mmeting to 1-7-75 and refrain from voting, giving any proxies, kix participating at or in said share
	holders meeting adj. to 12-12-74 etcMcFadden, J. (6903726) Filed Order pur. to the Final Judgment of 11-8-74 awarding Attys' Fees and ExpensesMcFadden, J. (6903726) Filed Petition of I ta Industries for instuction from the to Trustees to make paymenhead Byndhem to paying agent for Iota's
Den 30-7	Third Supplement by Arthur Tl
Jan 14-75	and a state and a man to the stratees are instructed to vote all shares
	the Iota Board of Directors at its meeting of 11-25-74 adopting a resolution as follows: RMSOLVED that the stockholers meeting
	originally scheduled for 10-17-74 as from time to time adj., is
Jan ·2-75	(69-5736) Filed Application of Special Counsel for award of Fees and reimbursement of Expenses.
Jan 2-7	of Application of Special Counsel for award of Peesetc.
Jan 3-7	a Supplemental to Petition for Attys' Fees for Murray Drabkin, etc.
Jan 3-	(69-5736) Filed Camplement to Petition for attyp' Pecs.

69 Civ. 3782,690 iv. h3h0,69 Civ. h3h2,69 Civ. h730 and 69 Civ. 7022 CONSOLAR EL INTO this action. 55 01111 3724 CIVIL DOCKET 69 Ciril 17.76 FOR ALL PURPOS NITED STATES DISTRICT COURT Jury demand date: No. 105 Rev. TITLE OF CASE (as of 2/7/72 CLASS ACTION) For plaintiff: SHERELIE LAND Chil Es land 100 Fast 32 Ct. Irw York, 1.7. 10022 Vs. COMMONWEALTH UNITED CORPORATIO BRUCE ROZET OLIVER A. UNGER IRVING GOLDSTEIN SIDNEY KERRICK RICHARD A. SARAGEN PODNEY W. IOTH Substituted 10-21-7 recalling & PILICH ARME KALM L20 lexington Ave. N.T. 10017 (H.MARTIN) DR. H. IGOR ANSOFF GOT FRIED von HEY EN HORE. TR. Copenheimer & Townsend (subst 7-16-71) HOWARD D. MARTIN WHITE & CASE (ARTHUR YOUNG & CO.) PETER GETT INGER FRED LANDAY & CO. Kuze 10/10/6: 14 Wall St. N.Y. KLEINER BELL & CO. For defendant: Symmers Fish & Marnor Lowenthal, andau, Fischer & Weisinger, EN 11- 613 (for Fred Landau & Co.) 250 Park Ave.NTL Bernson, Hoeniger, Freitag & Abboy Pomerantz, Levy, Haudek & Block (for Kleiner one East 44th Street (8/13/73) N.Y., N.Y., 10017 (Commonwealth United Corp.) 295 Madison Ave. NY 10017 -Frisch-& Goldfies 4/15/70 -- 60-East-42nd-6t-NYO-NY-Substituted by: (Commonwealth United)
Townley, Updike, Carter & Rodgers, 220 East L2nd St. NY 10017 Thacher, Proffitt, Frizer, Crawley & Wood, (for Louis J. Nicastro) Paul, Weiss, Coldberg, Rifkind, Wharton Garrison (for Podney W. Lort)3hs Pork Ave. 40 Wall St. NY 10005 Robert J. Jarner, Jr. (for H. Leer Ansoff) and for DAMany Spellman - &- San-Filippo (fer-Sidney-Bank Blo . ashville. Tens. 17219. Arne Kalm Kibrick)295-Madisen-Aves-N4-NAME OR DISB. DATE RECEIPT NO. STATISTICAL RECORD Clerk AND J.S. 5 mailed 111 11 5/2/21 8 Mithan 5/5/72 J.S. 6 mailed Marshal Docket fee Basis of Action: 11 1 10 " 11. ... S.E.C. Act of 1933 & 193h Witness fees Depositions Action arose at: A-102:

NAME OF THE PROPERTY OF THE PARTY OF THE PAR

	Ju- 10	A Comment
-	PROCEEDINGS	Date C. Judgment Noted
- 60 F	iled complaint and issued swomons.	
27,09	Dilled Dock thind nenty nliffs realy to counter claim	· · · · · · · ·
4-2/99	Filed Deft third party pltffs reply to counter claim	
7-2/09	Filed third pat ty DpItfis notice of appearance.	
736/19	min-1 - d - man and unturm Sames as to 1011:50	
A 43103	Commonwealth United arm by Indielical Commonwealth	ļ
-+	Oliver A Unger mable to serve in this did on 1/23/09	ļ
	Irving Goldstein unable to serve in this dist on 7/23/69	
	Theble to sound Sidney Wibrick in this dist on 1/61/09	+
	Richard A Saragen unable to serve in this wist on 4/23/17	
	Redney Took unchie to serve in this dist on 1/13/09	
	Gofffried Von Meyern Holhenberg unable to serve in this dist	-
-	on 9/23/69	+
-	Bruce Rozet unable toserve in this dist on \$/23/69	1
-	Peter Gettinger personally on 2276;	+
-	Haward fartin unable to serve in this dist on #23/69	+
	Fred Landan and company by In Fenton On 9/2/369	+
	Kleiner bell & Co by h. Dount on 4/2/5	+
	Arne Calm unable to serve on 0/23/69 in this dist.	+
0-69	nia i vi i - C A for Fred London & Co	
10/69	Filed Notice of Appearance for Fred Landa d 50. Filed stip andrder that tithe above entitled action is discontinued. Clork	& Co. or
120-69	Filed stipulation and order extending Kleiner, doll a Go. inc.'s time to answer	1
	complaint to 12/3/69. So ordered. Croake, J.	
25-69	Filed stipulation and order substituting Pomerantz Levy Handek & Block,	
	as attorneys for deft. Kleiner, Bell & Co.Inc., in place and stead of	
	Goldfeld, Charak, Brown, Tolins & Lowenfels. So ordered. Clerk.	P&G
H'69	Filed ANSWER of Deft Commonwealth United. Filed Order to Show Cause re: Consolidate. Ret. 12/9/69 (Also in 69 Civil 3782)6	904340 and
		- "
10/60	Filed in court Deft Kleiner Bell & Co inc notice of settlement.	000 60
116101		OZZ WITH O
	is annied. Plaintiffs shall serve and III a comboling	130
	within 20 days from date of this order. Cannella, J.	
170	Filed (in court) Affidavit of Edward Nathan) (Also in 5 related cases).	
1669	Filed (in court) Allidavit of Love	
1-9-969	Filed (in court) Memorandum of Law. Filed Affidavit of Ronald Gene Wohl in support of motion to consolidate.	
6-69		
316-69	Trained METO FMI) on Order to Show Cause filed 12/0/09. Motion disposed of in	_
2-16-69	accordance with order submitted and signed this date. So ordered Cannella	
16/60	Wiled summons and return Served as follow s:	
78707	Burt Kleiner by Mr. coldring on 10/9/69 in the CD. of Calif.	
	Lionel Bell by Mr. Goldring on 10/9/69 in the " """""""""""""""""""""""""""""""""	
	Ralph Shapiro by Mr.Golding on 10/9 69	
	Unable to serve "ichard Freling on 10/9/69" " " " "	
-	A.Bruco Rozor by Mr.Bocker on 10/9/69 " " " " " " "	
	Olivor Unger by Mr. Bocker on 10/9/69 " " " " " " " " " "	
-	Irving Goldstin by Mr. Bokkor on 10/9/96 " " " " "	"
	Unable to derve Richa rd a Sarazen on 10/0/69 """""	"
	Unalbo to sorve Richard A. Sarazen on 10/31/6) in the N.D. of	T11.
	Rodney Loob by Miss Cinco on 10/9/69 in the C. D. of Calif.	
	Rodney Loop by 1133 cines on 10/9/69 " " " " " "	
1	Unable to serve Arne Kahn on 10/9/69 " " " " " " " " "	
	Sinday Kibrick by Mr. Pocker on 10/9/67	
	Howard Martin personally in the N.D. of Texas on 10/8/6	
	A-103	

Served Dr. H. Igor Ansoff by Dr. H. Igor Ansoff on 1-1h-70 (M.D. of Tennessee)

Served Gottfried Voon Payern Hehenberg Servece Not Completed. Served Gotfried Von Payern Hehenberg by Mr. Herman on 2-10-70

N. O	PROCEEDINGS
4. 1510	Filed stipulation and order extending deft. A-thur Young & Co.'s time to answer conclidated amended complaint to the 19th day following the entry of an order by the Judicial Fanel on Multidistrict Litigation in the processing initiated
	Try the Penel's show cause order "Ro: Multidistrict Litigation Resulting from the Leeburg-Commonwealth United Derger" filed 2/2/70 (Docket No. 37). So ordered.
4	It'led efficavit of service of summens and complaint on Investors Overseas
	Scholers, Ltd. Geneva, Suitzerland on h/15/70, by mail.
4 0.	File I sticulation and order extending deft. I.O.S. Ltd's. time to answer the consolidated Arandad Complaint to 5/29/10, etc. So ordered. Tempy, J.
-2	Fired 1 mo of law (docketed also in H 19-95)
6	Lied lelter from Darborn, Enrry & Varner withdrawing Golenbook & Barrell for H. Jeer Interactiviting in their stead Robert J. Warner, Jr. of that firm - All notice partiting to this litigation to be forwarded to Robert J. Warner, Jr. c/o Daarborn, Perry & Warner, Swite 400 Commerce Union Bank Bldg., Hashville, Tenn. 37219.
6-2-70	the Indignization and order extending deft. I.O.S. Itd. 's tare to answer consolidated a randed complaint to 6/15/70. So ordered, Metley, J.
6-1-50	deft. Howard D. Martin in place and stead of Golenbeck and Barell. So ordered.
6 1-70	Clerk. Lited stipulation and order substituting Robert J.Warner, Jr. and William N.Dearborn of Dearborn, Perry & Warner, as attenneys for deft. H. Tgor Ansoff in place of Gelenbeck and Parrell. So ordered, Clerk.
(3.1.4)	illed skirulation and order substituting Boman, Fpellman & San Filippo, Esqs. of So Madison Ave. MY as attys for deft. Sidney Kibrick in place and stead of Gelenbock and Barell. So ordered. Clerk.
61.50	Piled Localice and Procedure Order upon Transfer signed by Judge Usradeen. 1 Not attracted and order substituting Found Cattinger & Peter Cattinger, Fags., 1 12 Care World Eng., So calend. Forder. J. (Necketed also in H. 19-95).
6 13311	et 402 Fich Art. on attyl. for doft. Oliver A. Uncer in place and a tond of Colorleck and Forell. So cycled. Defector, J. in 69 Civil 3726. Observed also in H 19 55).
7 10-7	1 Und ripulation and order substituting convol to Verl, Weine, Goldberg, Rifking What ton & Garrison, 345 Park Ave. MY instact of Goldbrode and Privalles above. It doft. Redny W. Loob. So ordered. Makedian, J. (Also do: loted in 4129 %). Until Processin of Arting Young & Go. RS: First Install Order. (Viled in 1129 %).
17.	Test Wildow's of Parale & Venton.
Jul 2	0-70 Wiled stipulation & order substituting Freeger & Sacher as atten- for deft. A. Bruce Rozet in place of Golenbock & Barell McFadden,
	J.

Jul 29-70 Filed stip & order substituting Fractic & Sacher of Mays. 100 defe. Trying Goldstein in place of Colembook & Barrit. HeFaddea, J.

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10. to 9-8-70. He Fedden,).

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Page 5

SHERELEE LAND vs. COMMONWEALTH UNITED CORP.

10 Rev. C	ivil Docket Continuation	
. 1		Data Ord Judgment
Sep.28-70	addressed to the complaint, to 10-5-10.	
0ct.1-70	Filed Suggested Agenda for Second Pretrial Conference to be held during the week of Oct. 26. 1970, submitted by pltffs. Jennings, et al (Paper filed in M19-95) Filed Objections of deft. Arthur Young & co. to Pltffs' "First Wave" Written Inter-	rener
oct.5-70 oct.5-70	Filed Mcmorandum of deft. Arthur loung & co. in support of conjections of product for "First Wave" Written Interrogs.	1060
ct.5-70	Filed ANSWER OF DEFTS. Kleiner, Bell & Co., Inc., Kleiner, Bell & Co.: Kleiner; Bell: Shapire: and the Associates to consolidated Second Amended Complaint.	PLHB
ct.6-70	Filed motion for dismissal and other relief Filed memorandum of Arthur Young & Co. in support of its motion for dismissal and other relief.	
Oct.6-70	Filed memorandum of deft Arthur Young & Co. regarding the class action order	
1 2 50	Filed Deft. I.). S. LTD . (S.A.) (C. ANGWER TO CARCULDATED AETCHD Amended Complaint.	
ct.7-70	The a Angles La Louis I Micostro to consolidated Second Amended Conditative	
t.9-70 t.3-70 t.11-70	Filed ANSWER of H. Igor Ansoff to compolidated second amended complaint. Filed ANSWER of deft. Sidney Kibrick to consolidated second amended complaint. Filed deft Howard D. Martin ANSWER to consolidated second amended complaint	D3 f
t 20-70	Filed Affdyt of Edw. Nathan in opposition to motion of Arthur Young & Co.	
ch21-70	Filed Affidavit of P. B. Konrad Knake.	-
ot.23-70	Filed plaintiffs motion requiring deft. Arthur Young & Co. to produce and permit pltf, to inspect as indicated.	
Oct.26-7		
Oct.26-	70 Filed anfidyt. of P.B. Konrad Knake (attys for deft. Arthur Young & Co.	PWGR
Oct 29-7	or move with respect to counterclaim of deft. Kleiner, Hall & Co. to 11-16-70	
Nov 12-	So Ordered: McFadden, J. 70 Filed doft Broblauer first Amended ANSWER to consolidated second amended complaints.	
	Componied the Cases -70 Filed deft ANSWER by Benjamin F. Preslauer to Consolidated Second Amended Complaint Commonwealth Cases	BFB
Nov 18-	70 Filed ANSWER of Theodore R. Sayers to the Consolidated Second	L&D
	-70 Filed AUSWER of Cottfried von Meyern Hohenberg, to the consolidat	ed KBU
Dec. 2-	70 Filed ANSOER of dett. A. Bruce Rozet to the consolidated second	P6.
Dec. 2-	70 Filed AUSTER of deft Irving Goldstein to the Consolidated Second	
uce.7-1	Filed Request for Production and inspection of documents to pltite Shortee Land, Sidney and Mary Abbey, etc. 70 Filed Request for Production and inspection of documents that pltite Request for Production and inspection of documents that pltife Request for Production and inspection of documents that pltife Republicated Second Amended	
	Lined in Paragraph -1 of pitts consolidated become institute	-
J 50,30	1-10 Filed 1 - prandum in support of deft. Hillip M. Drake's motion to diraise dated 12-24-70 in 69 Civ 3726	
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	- The Last William M. Drake Executor under the Last Wil	1
1332-7	Filed Motion of deft. Philip M. Drake, Executor, under the Last Wil and Testament of N. Clarkson, Earl, Jr., Deed., for protective	1
	order in 69 Civil 3726	
1,00	to mit a transfer plai in M broke as Executor of the titlete	
	of M Clarkson Fort Iv Hereaced to Clamba in Character	
1230-		
	Classeon Farl ir in Support of Said delta	55.
1-1-7	Wiled lemograndum for Commonwealth united coit. Class action picts	
-	Philip M. Drake, as executor of estate of 1. C. Zarl Jr., Decea	000
1-10-6	Filed dest. Acthur Young & Co., notice of notion and notion to	
9-1-1	compel the production of documents	
7-1-		
2 1 7 7	Filed Nemorandum of deft. Arthur Young & Co. in opposition to motion	Co.
4.71	Filed Hemorandum of deft. Arthur Young & Co. in opposition to motion	n
	for production of documents.	4
4-1-71	Filed Commonwealth United Corp. Class Action Pltffs' Request For	acced
	Production And Permission to Inspect and copy becameres, Add	enseu
<i>u</i> —	to Deft. Kleiner, Bell And Co.	0-
5-31-71	Filed Commonwealth United Corp. Class Action Pltffs' Request For Pr duction And Permission To Inspect and Copy Documents, Address	ed
	a p ft Anthur Vouga & Company	
5-371	Tilled Commercia of the United Corp. Class action was a	
9 - 1-		p very
J. 3 7I	Wiled Commonwealth's Request for Freduction adequated to otiff ed very mental to till a residue.	in tout.
5 3 71		
1.371	A. Unger, Irving Goldstein, Lichard A. Grader, Arm only, Idway Chrick,	
_	Howard D. Eartin, Tenjamin F. Fredhaue and Frodor . Sayer.	
5-371	Hiled Commonwealth's Request for Production to defts. art without her, Bully happy	
	and Freling.	
5-171	Riled Commonwealth United's Class Action Plaintiffs' Acquest for Production and	
· !=	Paraission to inspect and copy decuments, addressed to ditte. " " " " " " " " " " " " " " " " " " "	
	H. Iror Amsoff and Philip M. Drake, as Executor of the Astate of A. J. Burney, or	• •
	Liled Commonwealth United's Class Action PItffs' Request for Produc	tion
5-7-1	and Permission to inspect and copy documents, addressed to deft	:
	- Commonth United Corn	1
	riled eleffe! Amendment to 4-30-71 Request for Production of and	
6-1-	Formission to Inspect and copy documents, in-so-far as it is	
	addressed to Theodore R. Savers.	
64-	Type with to committated Second Survey Complete to the terror and the	
	- A second the South dated ballett	
6-16-1	Files Pospence of Kleiner Bell Group of Define to four reparate commentary	7
	Requests of Lord Count I (C) -13 posts in (II-19-25)	
L 16-7		ich and J. F.
1.1	the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer o	4
1.7	I lead to u .u u years d. Meastro and Believe W. Coleman.	
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1.	1 1 1 by 0 0 0 0 Gettirle I ver Heyern Here bride	- C. 9 ()
*3.5	1 Filed " " " Tell R Gottimer and Redney V. Lorb,	ho.
4.	1 13704 " " " Teter Heang, H.L. GOR Amsoff and Vallip H. Tra	
	Cintinued on next page. A-107	

Jun 16-71 Filed Request for production to A. Bruce Rozet, Oliver A. Unger, Irving Goldsto	Judgment
	in
Richard A. Sarasen, Arne Kalm, Sidney Kibrick, Howard D. Martin, Penjan	nih
F. Breslauer and Theodore R. Sayers	
Jun 16-71 Filed Request for production to Commonwealth United Corp.	
Jun 16-71 Filed " " " Kleiner, Roll and Co. Inc.	
V Val AV 1 E4	
Jun 16-71 Filed " " Arthur Young & Co.	
All in for M-19-95 Seeburg Commonwealth United Merger. un 17-71 Filed ANSWER of Arthur Young & Co. to Count I of the Decond Consolidated Avender	
Complaint.	W&C
12-21. Filed Recorne to 3 conestto reduce - Arthur Valle 6 0).	
ul 6-71 Filed Memorandum in support of motion for summary judgment or dismissal for	1
Arthur Young & Co. on Count II of complaint. (Also in N 19-95)	1
Jul 6-71 Filed Notice of Motion and Motion for summary judgment or dismissal of claim	
against Arthur Young & Co. (Also in H 19-95)	
Jul 6-71 Filed ANSWER to Count II of the Second Consolidated Amended Complaint.	
(Also in M 19-95).	
	1
ul 13-71 Filed Remorandum in opposition to motion for summary judgment or dismission for Arthur Young & Co. on Count II of the complaint.	
ul 13-71 Filed Flaintiffs' Amended Statement of Claims against Arthur Toung & Co. under Paragraph II-37 of the Second Consolidated Amended Complaint.	
under raragraph 11-37 6. the Section with officers washing to	
v. 16-71 Filed Roply Affidavit of P. B. Lonrad hale also dockated in J. 17-90).	
11 16-71 Filed Reply Hemorandum in support of motion for summary judgment.	-
11. 1/-71 Filed response to requests to produce by Componwealth United Corp	
McFadden, J.	d-
ul 22-71 [Filed Letter Memorandum of Derivative Fileffs' in Count II (Abso in M-19-25)	
	10 011
ug 3-71 Filed deft Arthur Young & Co., supplemental response to request to produce (N-	77-121
5 30-71 Filed	
3.71 Filed objections of deft Gottfried Ven Heyerr Hohenberg to request to produce.	
pp. 0-71. Filed Order pursuant to calendar rules 6 and 13. Edelstein Ch. J.	
ct 21-91 Filed Consent Order that I'cCarthy & Pillon be substituted as attys for deft	1
Howard Martin McFadoen J. (11-79-95)	fal
ov. 3-71 Filed stipulation amending the Commonwealth United Corp. Class Action Plaintif	13
Request for Production and Permission to Inspect and Cory Documents,	
Addressed to Defendant Commenwealth United Corp, as indicated.	4
Moy 19-71 Filed colt Arbbur Young Co. notice of motion for reargument of its motion date	<u>a</u>
7-2-71, for supporty judgment or dississal of count M.	
Her, 19-7 Filed schorandur of doff at in Young & Co. in support of motion for rengand	1011
Feb. 7-72 Filed CLASS ACTION OFFER NO Ordered that Sherice Land, Robert R. Jennings,	
vo. Germonwoolth United Corp.etal shall be maintained as Class Action, of	+
Frank H. Helindden, Judge. (Also docketed in H 19-95).	
Feb. 7-72 Filed application for leave to file interre, so and requests for admissions.	
(Gosgorga)th Unit d Corp.	
The 12-72 Filed by a from Art Centre Resultal, Dancy of Chian revision that	
in respect matter will be attending the arrive school for for for an	
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For 13-72 Filed be ter ret Harren, tween & Sturfe, Working Arthauf, wis the	·
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(Filed in II-17-23)	
Par Day Filled Job or Cook Foods P. Calman, near wing the complaint in 12 Clar L J. 15	
and acking he excluded from his action unless it is in my favor,	
the factal Filed total of Louis Goldfoul,	
A-108	
ONLY COPY AVAILABLE	

1	PROCEEDINGS	Ju-s den. No
20-72	Filed Order granting motion Derivative complaint (Count II) against Arthur	
	Young is dismissed. McFedden J. (Also docket in M-19-95)	
4 4-72	Filed deft Pacific Standard Fund Inc. notice of appearance	
10-72	Filed notice of appearance for Fidelity Capital Fund Inc. (Also in M-19-95	
111-72	Filed 2 Brown Envelopes containing Exclusion Notices received on or before	
	₩10/72 (marked #1 and #2).	
r.12-72	Filed Affidavit of Service by mail of Request for Exclusion by Polaris Fund	
	on 1/10/72	
9.17-72	Filed ANSWER of deft. Arme Kalm to consolidated Second Amended complaint in	
1	consolidated Second Amended Complaint.	PWRW&G
5		
14-72	1 mg 1 mg wint of managed inga datid 19/2/11	X
	Filed Transcript of record of proceedings, dated 197171 Filed Order extending time to respond to Notice re: Request for Exclusion from	1
21-72	Filed Order extending time to respond to Notice has adjusted and Lillian N. Crawford	
Para de la companya d	Class, of plaintiffs Jack B. Crawford, Den C. Crawford and Lillian N. Crawford.	
<u>f =</u>	to 1/21/72. McFarden, J.	
-24-72	Filed Order extending time to respond to Notice re: Request for Exclusion from	
	Class, of plaintiffs Jack B. Crawford, Don B. Crawford and Lillian M. Crawford	1
7	to 5/8/72. McFadden, J.	
.20-72	Filed Order modifying order entered on 3/16/72 - Ordered that the alternative mo	tion
AS .	of deft. Arthur Young for summary judgment is granted and the drivative compl	pint
	(Count II) against Arthur Young is dismissed. The Court hereby expressly dete	r-
	mines that there is no just reason for delay and that the judgment dismissing	t.he
	derivative complaint (Count II) against Arthur Young is hereby made final.	
	McFadden, J. (Judgment ent. 1/20/72. Fnt. 1/21/72.)	
4.6-72	Filed ORDER and MEMORANDUM OPINION #38156. McFadden, J. The motion of deft.	
4.0-18	Philip M.Drake, as Exector of the Estate of N.C. Earl, Jr., dece. to quash	
	service of process and dismiss the complaint filed in Civil Action 69-661	
	Southern Dis. Northern Dist. of Alabama, is granted, and said action is	1
	hereby dismissed with respect to this defendant; further ordered that the mo	-
		tion
	and the Publish M Dooks as Evenutor of Est. of N.C. Earl. Jr. decd. to dismis	tion
	of dot Philip M. Drake as Executor of Est. of N. C. Earl. Jr. decd. to dismis	9
	of deft. Philip M. Drake, as Executor of Est. of N. Larl, Jr. decd. to dismis the consolidated second amended complaint is granted, and said action is dis	9
	of deft. Philip M. Drake, as Executor of Est. of N. Lari, Jr. decd. to dismiss the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant.	9
r.26-72	of deft. Philip M. Drake, as Executor of Est. of N. Earl, Jr. decd. to dismiss the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant. Filed Additional Certificate of Service of the APPEARANCE in LAND action.	9
-	of deft. Philip M. Drake, as Executor of Est. of N. Lari, Jr. decd. to dismiss the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant. Filed Additional Certificate of Service of the APPEARANCE in LAND action. Filed pltfs notice of appeal to U.S.C.Amailed copies.	9
2-72	of deft. Philip M. Drake, as Executor of Est. of N. C. Earl, Jr. decd. to dismiss the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant. Filed Additional Certificate of Service of the APPEARANCE in LAND action. Filed pltfs notice of appeal to U.S.C.Amailed copies. Filed deft's Fidelity Capital Fund Inc. certificate of service.	
2-72 26-72	of deft. Philip M. Drake, as Executor of Est. of N. Earl, Jr. decd. to dismiss the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant. Filed Additional Certificate of Service of the APPEARANCE in LAND action. Filed pltfs notice of appeal to U.S.C.Amailed copies. Filed deft's Fidelity Capital Fund Inc. certificate of service. Filed Jock B. Crawford, Dom D. Crawford and Lillian M. Crawfrod, request exclusions.	ion
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2-72 .26-72 10-72 .17-72 15-72	of deft. Philip M. Drake, as Executor of Est. of N. Carl, Jr. decd. to dismiss the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant. Filed Additional Certificate of Service of the APPEARANCE in LAND action. Filed pltfs notice of appeal to U.S.C.Amailed copies. Filed deft's Fidelity Capital Fund Inc. certificate of service. Filed Jack B. Crawford, Don D. Crawford and Lillian M. Crawfrod, request exclusion the Land class action. Filed One envelope containing exclusion notices received after April 10th, 1972. Filed Order that pltfs Jack B. Crawford, Don B. Crawford & Lilliam Crawford shall have an extension of time to May 12, 1972 to respond to the Court's notion dated the 2nd day of Feb 1972, notifying certain persons that they may request exclusion from the class of plaintiffs in the present action. No Further extension of time will be granted. MC FADDEN, J. (No. December 1980). Filed Undertaking costs on appeal by Fidelity & Deposit Company in the sum of \$250.00	ion il,
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2-72 26-72 10-72 .17-72 15-72 -2-72 83-78xx 23-72	of deft. Philip M. Drake, as Executor of Est. of N. Larl, Jr. decd. to dismis the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant. Filed Additional Certificate of Service of the APPEARANCE in LAND action. Filed pltfs notice of appeal to U.S.C.Amailed copies. Filed deft's Fidelity Capital Fund Inc. certificate of service. Filed Jack B. Crawford, Don D. Crawford and Lillian M. Crawfrod, request exclusion from the Land class action. Filed One envelope containing exclusion notices received after Apriloth, 1972. Filed Order that pltfs Jack B. Crawford, Don B. Crawford & Lilliam Crawford shall have an extension of time to May 12, 1972 to respond to the Court's notice dated the 2nd day of Feb 1972, notifying certain persons that they may request exclusion from the class of plaintiffs in the present action. No Further extension of time will be granted. Filed Undertaking costs on appeal by Fidelity & Deposit Company in the sam of \$250.00 ***Pitch Shirley Burton notice of appearance.** Filed Notice to take deposition of Arne Kalm, Peter Gettinger, Irving Goldstein Peter Huang, I.O.S. Ltd. Bruce Rozet and Sidney Kibrick. Filed pltfs's notice to take depositions dated 6-20-72 is hereby amended in the Peter Huang, I.O.S. Ltd. Bruce Rozet and Sidney Kibrick. Filed pltfs's notice to take depositions dated 6-20-72 is hereby amended in the Peter Huang. Firming the Stampant of I.O.S. Ltd. by its agent. Morton I.	ion il, cs
2-72 26-72 10-72 17-72 15-72 2-72 93-78xx 123-72 22-72	of deft. Philip M. Drake, as Executor of Est. of N.J. Earl, Jr. decd. to dismis the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant. Filed Additional Certificate of Service of the APPEARANCE in LAND action. Filed pltfs notice of appeal to U.S.C.Amailed copies. Filed deft's Fidelity Capital Fund Inc. certificate of service. Filed Jack B. Crawford, Don D. Crawford and Lillian M. Crawfrod, request exclusion the Land class action. Filed One envelope containing exclusion notices received after April 10th, 1972. Filed Order that pltffs Jack B. Crawford, Don B. Crawford & Lilliam Crawford shall have an extension of time to May 12, 1972 to respond to the Court's notional dated the 2nd day of Feb 1972, notifying certain persons that they may request exclusion from the class of plaintiffs in the present action. No Further extension of time will be granted. MG FADDEN, J.(No. Defined Undertaking costs on appeal by Fidelity & Deposit Company in the sum of \$250.00 **Filed Undertaking costs on appeal by Fidelity & Deposit Company in the sum of \$250.00 **Filed Shirley Burton notice of appearance.* Filed Notice to take deposition of Arne Kalm, Peter Gettinger, Irving Goldstein Peter Huang, I.O.S. Ltd. Bruce Rozet and Sidney Kibrick. Filed pltffs' notice to take depositions dated 6-20-72 is hereby amended in the following respects, Examination of I.O.S. Ltd. by its agent, Morton I. at 2 p.m. on 7-5-72 is withdrawn without prejudice to further orders peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter Peter	ion il, ce
2-72 26-72 10-72 17-72 15-72 2-72 93-78xx 123-72 22-72	of deft. Philip M. Drake, as Executor of Est. of N.C. Earl, Jr. decd. to dismis the consolidated second amended complaint is granted, and said action is dismissed with respect to this defendant. Filed Additional Certificate of Service of the APPEARANCE in LAND action. Filed Pltfs notice of appeal to U.S.C.Amailed copies. Filed deft's Fidelity Capital Fund Inc. certificate of service. Filed Jack B. Crawford, Don D. Crawford and Lillian M. Crawfrod, request exclusing from the Land class action. Filed One envelope containing exclusion notices received after April 10th, 1972. Filed Order that pltfs Jack B. Crawford, Don B. Crawford & Lilliam Crawford shall have an extension of time to May 12, 1972 to respond to the Court's notified the 2nd day of Feb 1972, notifying certain persons that they may request exclusion from the class of plaintiffs in the present action. No Further extension of time will be granted. Filed Undertaking costs on appeal by Fidelity & Deposit Company in the sam of \$250.00 ***Extraction of the Court of Arne Kalm, Peter Gettinger, Irving Goldstein Peter Huang, I.O.S. Ltd. Bruce Rozet and Sidney Kibrick. Plaid Pltfs I notice to take depositions dated 6-20-72 is hereby amended in the other parts of take depositions dated 6-20-72 is hereby amended in the late of take depositions of take depositions dated 6-20-72 is hereby amended in the late of take depositions of take depositions dated 6-20-72 is hereby amended in the late of take depositions of take depositions dated 6-20-72 is hereby amended in the late of take depositions of take depositions dated 6-20-72 is hereby amended in the late of take depositions of the court of the late of take depositions dated 6-20-72 is hereby amended in the late of take depositions of the court of the late of take depositions dated 6-20-72 is hereby amended in the late of the late of take depositions of the late of the late of take depositions dated for the late of the late of take depositions of the late of the late of the late of the late of the late	ion il, ce

. 110 Bev. Ci	rii Docket Continuation	
DATE	PROCEEDINGS	Date Order or Judgment Noted
N 5-72	. Filed Discovery Order Number 3. LeFadder J.	
IN 5-72	n n n n n n	
JN 6-72 JN 8-72	Filed Stip designating the papers which will constitute the record on appeal. Filed Stip that the Two documents, the originals of which were submitted to the Court but which appear to be mi sing from the files are made part of the record on appeal, true copy of which is furnished by counsel.	
IN 8-72	Filed Derivative Pltffs! Hemorandum in opposition to deft, Arthur Young's motion for reargument etc.	1
JN 8-72	Filed Letter from Carrow, Berson, etc. addressed to Judge Horaddon (True Copy) to be included in the record on appeal.	
UN 8-72	Filed Certification of record on appeal to the U.CA.	
DI 26-72	Filed 2d amended notice of deposition,	
11 31-72	Filed 2d amended notice of deposition. Filed notice of change of adress and telephone number of the firm of	
	Paul, Hastings, Janofcky & Walker, to 555 South Flower St.	
	The Angelog Calif. 90071 Tel. (213) heg-hood (Also docketed in a	19-95).
0 70	The same and the same was a same was a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same a same	
g.8-72	Filed Stipulation of Schediffence. (also do not be respect to indemnification provisions Filed Memo of deft Arthur Young & Co. with respect to indemnification provisions	
1 15 12	I amont agreement	
21 72	Filed Memorandum in support of proposed modifications to order and houses to order	95
25-72	and a warmender of deft. Arthur Young & Co., in support of motion	-
4.23-12	to serve cross-claims and third-party complaint	1
25-75	Riled Notice of motion for leave to serve cross craims and	-
123-1	party complaint.	1
	- 2706 W - 1 / 2 www. all modifies	tions
The State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the State of the S	Filed in 69 Civ 3726Memorandum in support of proposed modification order and Notice to Class Members.	
1g.25-	72 SHERLEE LAND, ET AL VS COMMONWEALTH UNITED COMPORATION, ET AL	
411	I Filed Notice of motion for Leave to	
	third-Party Complaint. Filed in 60 C	
Jg. 25 -	72 Sherice Land, et al vs Commonwealth United Common et al-	ati-
	Filed Memorandum of deft. Arriver Vales, 1 ds., it in open of to serve cross-classe and 2nd percy consider the Files in 69 dis	372
		and
ug.25-7	Filed Afridavit of Mailing Notice attached as Emble 1 - two. 1 cross 3/1/72	
	3/10/72 - Also delivered are four (h) gray vol	69 010
1g.25-7	together with an afficivit of published with the standard in Filed Owner. The terms and provision of a state of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section of a section	
.6	Land dated 5/26/72, and the related completions concurrence and at	- title-
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	contemplated thursby of the claims of relams fund a ver frie free to	Lamer.
	fair and reasonable, etc.; with form at stice, : and t to make to, and as	
	of claim. McFadden, J. in 69 Civ. 377	·
Aug . 25-	72 Filed Stipulation of Westlement (filed 5/20/22 by No. 12 1 - 1 0 Civ. 37) This stipulation is made by the Interest for the realization	(1)
	it if a second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second to the second t	
	certain Individual Cases product and contain Red and discuss a ming of the	nore,
Aug. 25-	72 Filed Stipulation of Voncury and (filed 1/2, 12 by 15 10m, 5.) - in 69 Cir	3126,
Aug.25-	72 Filed Stipulation of Concurrence of Kleaner boll 1300 - delta-111180 5715	72
	to Maddan in 60 Civ Wallater and	
Nug.25-	72 Filed Stipulation of Concurrence/ mitiating to ties and Alaris Fund, inc. in	
Aug. 25	72 Filed Stipulation of Concurrence between 11 12 atlant 1 1.68 in Cycly. 31	
	INTIATING PARTIES AND SIDNEY KIBRICK IN 690,0. 3726	

ATE	PROCEEDINGS	Date Order Judgment N
-18 1972	Filed Transcript of record of proceedings, dated Aut 1-2-3-4, 197.2	X
-2-72	Filed order that the pending motion of ceft. Arthur Young & Co. for leave to serve	
	cross-claims and 3rd pty.complaint will be heard by the court at 10 Avi on	
	10/24/72 at the U.S. Courthouse, Foley Sq. NY McFadden, J. (with Judge McFadder	n!s
	letter that copies have been mailed to allcounsel) (Also in M 19-95).	
11-72	Filed NOTICE OF INTENTION TO RPPEAR AT THE HEARING of the proposed Settlement wil	th
	CUC - if Bernard C. Segal.	
-12-72	Filed Notice of Appearance, pro se, for Jesse I. Krauss.	
12-72	Filed Objection of The Landau Family Foundation to Proposed Settlement.	
16-72	Filed Commonwealth Memorandum in opposition to arthur Young motion for leave to serve a new pleading.	
0-16-72	Filed Affidavit in opposition to motion by Arthur Young.	
713-	Filed Memorandum of Kleiner Bell Defendants in opposition to motion or def.	
	Arthur Young & Co. for leave to serve a 3rd pty. co.plaint and cross-claims	
-5-72	Filed Memorandum of Jack B. Crawford, Don D. Crawford and Lilliam M. Crawford in	
	opposition of motion of Arthur Young & Co. to serve cross-claims and 3rd	
-	pty. complaint.	
0-16-72		
10.17-72		4
0 021-15	Attys. for Deft. Sidney Mibrick to:	,
	20th Flo. r, 645 Madison Ave. NY 19022 Tel. (212) 832-1080	1
t.16-7	Filed Memorandum of Law of defts. Colemans and Nicastro.	1
ct.16-7		
10:017-7		
	-72. Filed Order granting motion of I.O.S. defendants for an extension of time to	-
dct.19		
	file a supulation of Concurrence, to rojetile, saratuen, of	+
)ct.19	-72 Filed Order granting motion of defts H. Igor Ansoff for an extension of time	+
70.00	to file a stipultion of Concurrence, to 10/21/72	
0.19-72	Filed ORDER granting the motion for an extension of time within which to	-
	Tile a Stipulation of Concurrence of deits. Fater Cettinger, Cliver Hagen	
	bruce no zet, irving Goldstein, Rodney Loeb and Cottfried von Nevern Johan	berg
	to 10/24/12. Acradden, J.	+
1020-72	Filed Stipulation of Concurrence.	
10 29-72	Filed Commonwealth United's Response to Objections to Settlement.	
10.24-72	Filed ORDER that the motion for an extension of time within which to file a	-
	. Stipulation of Concurrence of eft. Peter Huang is granted, and the time	
•	extended to 10/21/72. McFadden, J.	-
Oxe 22cz	czeżandz Barzczandzda czerzczo zaponożo zo z tro	
26-72	Filed Reply Hemorardum of Arthur Young & Jo. in support of motion for leave to	1
	serve cross-claims and 3rd atv complaint	1
-) 72 V	Filed COUNT I Plaintiffs' Response to Interross, propounded by deft. Arthur Young & Co.	-
1-3-72	Filed Order further extending time for defendants feter Huang, Peter Gettinger,	
1 2-15	Oliver Unger, Bruce Rozet, Irving Coldstein, Rodney Loeb, Cottfried von-	
	Heyern-Hohenberg and H. Igor Ansoff, to 11/15/72. heFad en, J.	
1-14-72		ns
	of Concurrence be prepared to present, at the gearing to	
	evidence with regard to the fairness, reasonableness and	+
	proposed settlements with Kleiner Lell Group; Sione, Ki	
	Allen & Co.Inc.: Peter Huang: A. ruce Rozet; Irving vold.	
	lievern-Hohenberg: H. Igor Ansoff, - and in the event Stiph tices of voncurrence	1
	are filed with the Clerk prior to 11/20/72 each of the following: Poter Cetting	dr:
	Oliver Unger; I.C.S.; and Rodney Loeb, e.c. McFad.co., J.	
-	- Direct original and a country and a country of	1
6 - A		
	continued next page	

DATE	PROCEEDINGS	Date Order or Judgment Noted
v-20-72	Filed Stipulation of Concernee of Loaney J. Loeb	
v.20-72	(by Townley, Updike, Carter alodgers	
v.20-72	" of Irving Goldstein	
v.20-72	of Oliver A. Unger	
v.20-72	" of Peter Gettinger	
v.20-72	of (by Townley, Indike, Carter & Ledgers.)	
20-72	of Gottfried von Nejern-Hohenierg	
v.20-72	of A. Bruce Rozet.	·
v. 27-72	Filed Stipulation of Concurrence of motor anternatl. Corp., Exeter Builties,	ļ
	Ranchos Inc.	
v-27-72	Filed original of an order extending time to the 1.0.5. defendants to file a	
	Stipulation of Concurrence to Nov. 22, 1972. Ackader, J.	
7-28-72	Filed transcript of Redord of Proceedings of Herring of Cot. 24, 1972.	X
29-72	Filed Herring before Fon. Frank H. Ichadie, on the Pressed ettlemints as growing	cled y
	in the Stipple tion of Settlemat electors are need on 10/21/72, continued	dvidence
	with regard to the fairness, reasonal length on its inquacy of the Proposed Lat	tlaments
	with each of the following cefts, are the Land-dradings class.	
	1. Sidner Kibrick - Gral motion of eart. C.c to a mergarate all records,	exhibits
	and transcripts of bearings held on Aug. 1,2,3,4, Oct.2h, and Nov. 28,1972 in	140
	the record of this hearing. Not a granted. Lemorandum of left. Mibrick in	support
	of application for approval filed.	
	2. Kleiner Bell Group - Hencrandra of Fleiner Bell Group of Defus. in suppo	ozt
	of settlement filed.	
	3. Louis J. Nicastro - Memorandum in behalf of Mefts. Coleman & Micretro in	
	support of application for approved sike. Affin it of Louis J. Micestro Co	isd.
	4. Allen & .Co. Inc. Affida vit of Herbert A. Allen Tlad.	1.5
	5. Peter Huang - Affidavit of Peter Huang Gled positioned Feter huang	filed.
	6. Gottfried von Mcyern Mohenberg - Affild Lt of Pottfried ten Deyor Lone if	borg tile d
	7. H. Igor Ansoff - Affide it of I or ensor's filed.	
	Affidavit of Adward Mathan, co-counsel for Paint for file.	1
	Hemorandum of Law by Cormonwealth Desivative for attack in acceptant of approved	Hi led.
	Defendant's. (C) testimon.	
00.70	Froposed Settlement Application taken under an istricut. Filed in Clerk's Office at 11:10 P.L 10.0 per and discent. The Land	
v. 29-72	Settlement, as modified in assor and the findings resited, and the	0
	Stipulation of Settlement, along with the separate tipulation of Settlement,	200 00
	the Kleiner Bell group defendants, louis de licentro and pidag addrick are	
	finally approved as proper, fair, reasonable, just, equitable and adequate an	
	objections thereto are heren overruled,	10 th
	Gount I of the Consolidated Assemble Complaint (-) ass Claims, is	
	severed from this action and continued as against coft. Arthur Your 3;	
	Count II of the Consolidat a pocone nate and by derivative file /	
	is severed and continued as against 5.0 (as a like, benefic as as a like as),	
	A. ruce rozet, Oliver A. Unger, rvin sold telm, delare a Largen,	
	Rodney W. Loeb, Arne Galm, H. Lgor Am of f, Gott fried v nde yorn follower,	
	Howard D.Lertin, Poter Gettinger, Theodore a. Capers, Piter Cana, Section	
	Breslaver and f. J. Line (.A.) atc. tr. The Cont North cutterning the	
	there is no just reason for delay to the only of this final just and and	
	accordingly directs that this line judgment to entered as, and e come,	a
	final judgment in accordance with hule 5h(b) of the FROP. The Glass is a r	sted
-	to enter the fore oing as a final jud ment forthwith lor oden, J. (mailed Mailed copies of order and judgment as directed by Judge McFadden to all person	

A-112

re		Order or nent Noted
6-72	Filed Stipulation of Concurrence contained in large red portfolio.	
-11-72	Filed copy of letter from Ronald N. Wottlieb addressed to CUC Transfer Co.	
0-12-1-	re: his wife's stock Correct Address is Ars. Laryl Gottlieb, 110 Miles Ave.,	
	White Plains, N.Y. 10606.	
1243-72	Filed copy of Order and Judgment filed 11/29/72 with affidavit of service by	
	mail upon Jesse I. Krauss, Bernard C. Segal and Phaw, bernstein, Scheuer, Poyden	
	& Sarnoff. (Filed in M 19-95.) (Also in 69 Giv. 5736.) Filed Stipulation of Concurrence of ARME KALL.	
21572	Filed Stipulation of Concurrence of ARME KALM.	
2.19-72	Filed ORDER that the hearing in this cause heretofore set for Tuesday, Dec. 19,1972	
- ''	is continued generally pending further order of the Court. McFadden, J.	
78	(mailed notices)	
1-1.8-72		
	A. Bruce Rozet, Oliver A. Unger, Irving Goldstein, Gickard A. Sarazen, etc. and	
f	ending with Lillian N. Crawford are finally approved as proper, fair, etc. and	
	any and all objections thereto are hereby overruled; Count I of the Conselidated	
	Second Amended Complaint (class claims) is severed from this action and continued	
	as against Arthur Young - Co. onl; Count II is severed and continued as against	
	CUC, Theodore d. Sayers, Benjamin t. Dreslauer and doward D. Martin; This action	
	and all actions consolidated therewith are dismissed as against defts. A. much Ro	zet,
	Oliver A. Unger, Irving Goldstein, Michard A. Sarazen, Modney W. Loet, Arne Aalm,	
	H. Igor Ansoff, Gottfried von Begern-Hohenberg, Peter Gettinger, Peter Huang and	,
	I.O.S., Ltd. (S.A.) with rejudie and without costs, etc. etc. The Clerk is directed	
	to enter the foregoing as a final jud ment forthwith. ects dden, J. (Jud ment ent. Ent. 12/20/72. (mailed notice). (Also docketed in N 19-9)C.)
2-18-72	TITIES TO THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE IN THE TAXABLE	
7.10-15	to contribute cash to the Settlement fund on the Closing Late shall make payment	
	by certified or cashier's check to the order of Townley, pdike Garter & Lodgers,	
	as trustees, on or before the closing date, etc.; Ordered that as of the Closing	
100	Date deft. Commonwealth United Cor . Shallisue Townley, Updike, Carter & odgers,	
	trustees, shares as indicated; ordered that Townley, Updike, Carter & Modgers, as	
	trustees, shall hold all money, bank deposits and shares of stock as indicated;	
AND DESCRIPTION OF THE PARTY.	Ordered that the reasonable fees and expenses of Townley, Upday, Carter at odders	for the
	Services as trustees ereunder shall be paid by Seeburg Industries, Inc. McFadden, J. Judgment ent. 12/18/72. Ent. 12/20/72. (mailed notice). (Also in E.	19-95)
-18-72	Filed FINAL CROPE AND JUDGMENI. Ordered that this action Central Dist.Cal.70-122 300	2
, 15	POLARIS FUND W. COMIO WEALTH. Ordered that this action is dismissed with	,
	prejudice and without costs as against all defendants therein.etc.	
	McFadden J. Judgment ent 12/18/72 Ent 12/21/72 (also dealeted in U.10-96	.)
1-27-72	Filed deft Arthur Young & Co.'s notice of appeal to the U.S.C.A.	
	from the final order and judgment entered on 11-29-72.	
	Mailed copies.	
2-2-13		
A	105 West Fadison t., Chica o, 1111 60602	
1227-12	Filed Stip of Concurrencethe New Party agrees to accept in full	
	settlement of all litigation and claims to be settled or re-	
*	deased under the Stip of Settlement, the Settlement Shares and	
***	cash if any distributable to him per to 4.2 of the Stip of Settl	.0-
A	ment. (docketed also in 11-19-95)	
1 -7-73	Kadison, Pfaelzer, Coodard, Quinn, to Kadison, Pfaelzer, Goodard, Quinn & Rossi,	
F17-73	Biled Matice of Appeal by Arthur Young & Co. (mailed copies).	
1-22-73	Alled Order that the motion of Arthur Young & Co. to file cross claims and a	
	third party complaint is hereby granted. McFadden, J.	
1-27-73		

CIVIL DOCKET CLERK'S FEES FILINGS-PROCEEDINGS Feb. 2-7 PLAINTIFF DEFENDANT see sage 15 Low entry Filed Notice of Motion re: Construction and enforcement of Section 3 of supplication Feb.13-73 of settlement and subparagraph 3(i) of tipulation of Concurrence of Oliver A. Unger. Feb-20-73 Filed ANSWER of Kleiner Bell Group to 3rd gry.complaint and trost-claims of deft. Arthur Young & Co. Filed ANSWER of Arne Salm to 3rd ptp.c salaint, and crops -oldies Fcb. 22-73 pltf. Arthur Young & Co. Filed ANSWIP of Poincy Lock to 3 rd pty. durplaint, and tross -plaint of doff-3rd Feb.22-73 pty. Arthur Young & Co. Feb. 23-73 Filed stipulation and order substituting comlet, budike, Carter | Korpers as attys. for deft. Louis s. Mica tro in glac and stehd of hagher, Proffitt, Prizer, Crawley & Word. So order t. Mcladuen, J. (also in + 19-95) (mailed Feb.28-71 Filed Supplemental Stipulation of Voncurrence of Uliver Unger. So ordered MaFadden, Filed Order that instead of the "Lotic of leading Rejection Feb.28-73 of Chain in the form annexed to the Stipulation of Met lement and referred to in par.5.3 th reof, Icta shall send out notices in the form of Notice of Fencing Rejection of Claim annexed to this order, which formit hereby approved, a to Moladde , J. Filed Order - the issues in the motion of C C Class action P. dintiffs Mar.1-73 Construction and Enforcement of Sec. 3.2 of the - quitten if Set lement dated 5/26/72 and Construction and Enforcement of Susparagraph i) o Paragraph 3 of Flipulation of Y courrence of Cliven at Inger do Nov. 10,1972, having been disposed of ty agreement, the gotton to avertured as moot. McFadden. (Also in 11 -95). Filed stipulation and order extending cross-defendant withmer ditrict time Mar.1-73 or move with respect to cross-normaleint, to 1/28, \$. 5 troe. o. Wisdon, J. (Also in 1 1 -95). Mar .22-73 Filed Stipulation and Order of Concurrence of Theodore R. Sayers. So ordered. McFadden. J. May 1-73 Filed Affidavit of Charles Land in support of Application for Counsel Fees & Lisburge May 1-73 Filed Petition for Attorneys' Fees of Murray Prackin, Sent. Coursel. May 1-73. Filed Memorandum of Law of Derivative altfs. in support of Fee Apolication of their attorneys. May 1-73 Filed Application for Allowance of Accountants' Fees, Disbursements, and Attorneys' Fees of General Counsel for Derivative (Count II, Cornerwealth Mtf May 21-73 Filed Application for Allowance for Attorneys! Fee (by Fitf. Atty. Ficstein, haves 5 Hyde). continued next rage. A-114

ivil 3726 SHERLEE LAND, e al vs. COM OWNEAL HOUTERN GOTP., etal

			5 FLES	AMOU T REPORTED IN
TE	FILINGS—PROCEEDINGS	PLAINTIFF	DEFENDANT	EMOLUMENT RETURNS
7 -73	Filed Application of Ceneral Counsel for the CUC CLAUS for	r Award o	f Fees for	legal
	and Accounting Services and for reimbursement of our			ments
	in connection with contemplated settlement with Art	ur romg		
, - 26-7	3 Filed deft's(LOUIS J. NICASTRO) notice of inte	tion to	purchas	e stock
8-10=7	3 Filed stip & order of concurrence of deft. (BE	NJAMIN F	BRESLA	UER).
6- 13-	73 Filed notice of change of pame of attorney:s	for Com	nonweelt	n United Co
	(see page one)			
8-14-7	Filed pltff's notice to take depositions of Ho	mand D.	Martin :	n 8/24/73
	James A. Lewis Engineering			
8-14-7	Filed Order that Townley, Updike, Carter & Rodge	rs as T.	ustees,	re authori
	and directed to withdraw interes on Set 1	ement Fu	ind and s	hall depos
	said interest in the bank selected by lets	Industr	ies.McF	dden,J.
B-16-7	3 Filed deft's (Iota Ind.) memorandum to all Cou	unsel		
B-16-7	Filed notice of election			
R+16-	73 Filed deft's(Iota Ind., Inc.) notice of a tion	ry Rober	t F. Dzi	urgot
	Filed Order setting hearing on Nov. 13, at least			
	determining whether the proposed settlemen			
	Stip. is proper , fair & reasonable, also :	etting s	chedule	for rotic
	and reply's			
B-16-7	Filed deft's(Iota Ind., Inc.) stip.of vertile br	di with 1	Anthur Yo	oung& Comp
)- 20-	73 Filed derivative pltff's affidavit in respons	se to the	affida	dit of Char
	Bruce Land, Esq. concerning his fee spelle	atin,&m	morandu	of low in
	to memorandum, in support of Charles Land'	a suplice	tion	
7-27-7	3 Filed affdyt of Charles Bruce Land ; Re: in to	he joint	fee Tpp	liert' n et
	for Derivative pltff's			
8 - 27-7	3 Filed memorandum in support of Charles Bruce	Lond		
10-16-7	3 Filed notice of intention to uppear and object	tion to	proposed	settler ent
	73 Filed verfied supplement to toe application			
	CUC class and reply to IOTA'S sant.10.4073	respons	d theret	1.
10-31-	73 Filed affidavit of mailing, deft's.			
10-31-	73 Filea reply memorandum on behalf of CHARLES	B. LAND	Ito tie	16. 51% (A 34.
	- lew or EDWARD NATHAN & BERNSON, HOERIGHT.	FREITAG	&ABBTY	1.201 / 150
10-21-	73 Filed affidavit of EDWARD NATHANandHOENIGER			
THE PERSON NAMED IN	of 5-19-73.			
10:31-	73 Filed deft's affidavit of publication in the	W 1 St	ten: Jos	1141
/6:31-	73 Filed deft's affidavit of publication in the Aug. 31-73.	W 3t	100. 100	
16-31-				

69 Civ.3782, 69 Civ.4340, 69 Civ.4342,69 Civ.4780 &69 Civ.5022 Page 14 Consolidated into this action. 69 Civ. 37 6 Mc Fadden, J.

DATE	FILINGS PROCEEDINGS	AMOUNT REPORT TO IN EMOLUMENT RETURNS
Nov.14,7	3 Filed deft's (ARTHUR YOUNG & CO.) memorandum of defendant in support of proposed settlement.	
Nov.8-73	Filed Affidavit by General Counsel for CUC Class in support	
Nov.8-7	Proposed settlement with Defendant Arthur Young & Company. B Filed Memorandum as General Counsel for CUC Class Action	
	Plaintiffs in support of proposed settlement with Defendar Arthur Young & Company.	t
Nov.13-	73 Filed Mem-re: hearing before McFadden, J. on the issue of the proposed settlement between the class & Arthur Young 8	c Co.
	& motion of Iota Indus. for modification of the Court's prior order for distribution Proposed settlement, and	
	motions for modification taken under advisement; Written orders to be entered.	
Dec.14,	3 Filedorder directing payment of interim allowance to Co-Ger	leral .
	Counsel for derivative Commonwealth Pltff's, Done & Order	
	Dec.10,1973, by McFadden, J.	
Dec.14,	3 FiledDeft's Order directing payment of interim allowance to	General :-
	Counsel for the CUC class-McFaddon, J.	
Dec.14,	3 Filed Deft's findings of fact & conclusions of law-McFadder	1.J.
Dec.14.		
	terms are adjudged to be proper, fair and adequate all	*
	to the compromise and settlement are overruled and deni-	id in all
	respects-the settleing parties named in the within para	raphs are
	directed to perform the settlement stip, according to the	· · · · · · · · · · · · · · · · · · ·
	McFadden, J Judgment entered Clerk.	
Jan.3,74	Filed Stip.& Order: Withdrawning appeal from the final Orde	y.
	and Judgment of April 18,1972., McFadden, C.J. (TRUE COPY)	
Jan. 3 74	Filed Pltifs. Rotice o. Appeal from riest to meet to see 14,177	1.
	Ent. 12/14/70 by Lonard Profit Commission	
Jan. 7,71	Filed Statement of Claim, of William E. Ledzick, Betty J. Lelz	sick 7
	et.al., .	
Jan.10,7	Filed Order granting motion striking the allegations from a	he amended
	complaint as indicated The america complaint is dismi	
THE SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECOND SECON	to defendant Seeburg Industries, Inc McFndden, J.	
Jan. 10,7	Filed Order that the class members whose claims are alleed	it up omour
	of less than \$300. shall be excluded from participation in	
	FundDistribution of certificates for shares distribute the Share Fund and payments on allowed claims out of the	lin out of
1) C 110	A-116	

69 CIV 3726

DATE

THE PERSON ASSESSMENT

consequence proceedings.

Filed beft Arthur Young's notice that its appeal to USCA from the order & judgment of Feb 2-73 Nov 29-72 and Dog 18-72 will not be docketed being rendered most by order of Mc Fadden . 1. Inted Jan 16-73.

10-21-70* Filed Lasver of Peter Huang to the consolidated 2nd Amended complaint.

3-8-71* Filed Notice of Motion of plaintiffs in count 11

3-8-71 *File ! / ffidevit in Opposition by plaintiffs.

3-8-71* Filed plaintiffs' memo. of law.

5-27-71* Filed 2nd Pretrial conference order.

6-15-71* Filed Statement of Claims.

Filed Memo, in opposition to motion for summary judgment or dismissal. 7-13-71*

10-12-71 Filed Memorandum opinion #38021.

1-24-73* Filed Memo. Opinion # 39140 .

Filed Statement of Claim. 1-7-74

Filed order signed by Judge Macfadlen on Dec. 26-73. 1-10-74

Filed order approving agreement of American National Eank & Trust Co of Chicago to act escrow agent under stipu lation of settlement with Arthur Young & co. -10-74

P.21,74 Filed Stipulation and Order of Dismissal: So Ordered by Feinberg, C.J.,

on. 24,74 Order: It is Ordered Adjudged and Decreed that the agreement as above s out be marked filed as of this date and made a part of the record of proceedings held on June 13,1974, relating to the status of the -ing claims filed by Commonwealth United Corp. and Seeburg Ind. members. Done this 21st Day of June, 1974, Mc Fadden, J.

1.24,74 Filed Order that On August 27, 1974, in the U.S. Court House, Foley Sq. at 10:00 a.m.; In Re: finally determining whether claims are to be allowed herein and in What specific amounts, Mc Fadden, J.

.24,74 Filed Order that on August 27, 1974 at 10:00 a.m. in the U.S. Court House Foley Sq., In Re: finally determini whether claims are to be allowed herein and in what specific san ats. An that the class action counsel for plaintiffs and American Tra. r Co., shall present to the Court two separate lists of Statements of Claims, McFadden, J.

. 1.22,74 Filed A.Bohm's Objection.

Aug. 28,74 Filed order that the recommendations of the American Transfer Co. & Counsel for class pltfrs. are allowed --- Claims of Mrs. Rose Fischer, et-al are allowed in the amounts indicated --- McFadden, J.

Seeburg-Commonwealth United Litigation-V-Sherice Land, et-al McFadden. J. CIVIL DOCKET Civ. 3726 69 Civ. 3726_ PROCEEDINGS DATE Sep.18,7/4 Filed Final Judgment on Claims -- There is no just reason for delay in entry of a Cinal judgment allowing, disallowing, allowing in part and disallowing in part the claims which have been filed by members of the CDC class in this action -- McFadden, J. Judgment entered //18/74, Clask. / O/74. Filed order that Townley, Updike, as Trustees, shall at any meeting of Oct. 29, 74. shareholders vote all shares as indicated .-- McFadden, J. Filed order that Townley, Updike, as Trustees, vote all shares Nov. 25.74 as indicated at the adjourned meeting of shareholders of 11/26/74---McFadden, J. Dec.16.74 Filed order that in conformity with prior oral orders that Townley, Updike, Carter & Rodger, as Trustees, be and hereby instructed to vote all shares held by them at the adj. meeting of shareholders which was scheduled and held on 12-12-74 for and in favor of . adjournment of said meeting to 1-7-75 and refrain from voting, giving any proxies, etc. McFadden, J. Filed order pur. to the Final Judgment of 11-8-74 awarding Attys.' Dec, 16,74 Fees and Expenses --- McFadden, J,
Filed Petition of Iota Industries for instruction XXXXXX the Trustee
to make payment for the benefit of Iota to U.S. Trust Co. etc. Dec.16,74 Filed order instructing Townley, Updike, Carter & Rodgers, as Jan.14,75 Trustees, to vote all shares held by them at the adjourned meetingrof shareholders on 1/7/75 for and in favor of a resolution confirming the action taken by the Iota Board of Directors on 11/25/74, etc .--- McFadden, J.

A-119

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

SHERLEE LAND, ROBERT R. JENNINGS, HARRY J. MYERS, CARL KALASH, OLGA KALASH, SIDNEY ABBEY, MARY ABBEY, SHIRLEY GOLDMAN, MARTIN DE STEFANO, NANCY SPITALNIK, IRVING BAUM, SIMON ALTABET, STANLEY A. CHASE, SALVATORE DE FRESCO, KATHRYN FOX, THOMAS FOX, NORMAN GLASSEROW, JULIUS GLAZER, TAMARA GLAZER, MARCIA E. HERMAN, GEORGE HOROWITZ, JOHN HOROWITZ, HARRY JACOBS, HAROLD LANZNER HOROWITZ, HARRY JACOBS, HAROLD LANZNER, LOUIS MELTZER, JAMES ROSENFELD, SAUL E. SAPPER, CHARLES SCHNEIDER, BERNARD SEGAL, LOUIS SEGAL, LOUIS SINGER, MAX I. STAUB, JOHN SUB, GEORGE WALTER, MARY JANE WEISS, CARL WEISS, BESSIE YABLON, CHARLES NEMAROW, JERRY FUSS, ERNEST J. GLOVER, HANNS BEYER, ALINE BEYER, BENJAMIN B. LEINOFF, LEINOFF PROFIT SHARING TRUST, JOSEPH GROSS. CHRISTIAN TEUCHTLER, BERTHA H. MEYERS and PHIL MEYERS,

Plaintiffs,

- against -

COMMONWEALTH UNITED CORPORATION, A. BRUCE ROZET, OLIVER A. UNGER, IRVING GOLDSTEIN, SIDNEY KIBRICK, RICHARD A. SARAZEN, RODNEY W. LOEB, ARNE KALM, H. IGOR ANSOFF, GOTTFRIED VON MEYERN HOHENBERG, HOWARD D. MARTIN, PETER GETTINGER, KLEINER, BELL & CO., KLEINER, BELL & CO., INC., LOUIS J. NICASTRO, BURT KLEINER, LIONEL BELL, RALPH SHAPIRO, RICHARD A. FRELING, THEODORE R. SAYERS, PETER HUANG, BENJAMIN F. BRESLAUER, PHILIP M. DRAKE, as Executor of Estate of N. C. EARL, JR., deceased I.O.S., LTD. (S.A.), ARTHUR YOUNG & COMPANY and 140 ASSOCIATES,

Defendants.

CONSOLIDATED SECOND AMENDED COMPLAINT

Plaintiffs, by their undersigned attorneys, allege on information and belief:

A-120

COUNT I AGAINST ALL DEFENDANTS

I-1. Plaintiffs Robert R. Jennings, Harry J. Myers, Carl Kalash, Olga Kalash, Irving Baum, Charles Nemarow, Jerry Fuss, Sidney and Mary Abbey, Shirley Goldman, Martin De Stefano, Nancy Spitalnik, Simon Altabet, Stanley A. Chase, Salvatore De Fresco, Kathryn and Thomas Fox, Norman Glasserow, Julius and Tamara Glazer, Marcia E. Herman, George Horowitz, John Horowitz, Harry Jacobs, Harold Lanzner, Louis Meltzer, James Rosenfeld, Saul E. Sapper, Charles Schneider, Bernard Segal, Louis Segal, Louis Singer, Max I. Staub, John Sub, George Walther, Mary Jane and Carl Weiss, Bessie Yablon, Ernest J. Glover, Hanns and Aline Beyer, Benjamin B. Leinoff, Leinoff Profit Sharing Trust and Joseph Gross bring Count I of this action on their own behalf and on behalf of all persons who during the period commencing October 16, 1968 and ending August 1, 1969, acquired for value any securities issued by Commonwealth United Corporation (herein "Commonwealth"), and who have sustained losses as a result of defendants' wrongful acts and omissions as herein alleged. All such persons are sometimes collectively referred to herein as the "class".

I-2 Jurisdiction of this count rests on Section 27 of the Securities Exchange Act of 1934 [15 U.S.C. § 78aa], Section 22(a) of the Securities Act of 1933 [15 U.S.C. § 77v(a)] and on the principles of pendent jurisdiction. This count arises under Section 17(a) of the Securities Exchange Act of 1933 [15 U.S.C. § 77a(a)], Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b), 78n(a)], the rules and regulations of the Securities and Exchange Commission promulgated under both acts and common law principles.

- I-3. All of the plaintiffs to this count acquired their Commonwealth securities during the period complained of.
- I-4. The members of the class are so numerous that it is impracticable to bring them all before the court; there are questions of law and fact common to the class, which questions predominate; the claims of the plaintiffs herein are typical of the claims of the class and plaintiffs will fairly and adequately represent the interests of the class. This class action is superior to all other available methods for the fair and efficient adjudication of this controversy.
 - I-5. At all times pertinent to the complaint Commonwealth was and

still is a corporation organized and existing under and by virtue of the laws of the state of Delaware, transacting business in the Southern District of New York.

- I-6. At times pertinent to the complaint, the defendant A. BRUCE ROZET was Chairman of the Board of Directors, President, Chief Executive Officer, a director and "controlling person" of Commonwealth.
- I-7. At times pertinent to the complaint the defendant OLIVER A. UNGER was Vice Chairma nof the Board of Directors, a director and "controlling person" of Commonwealth.
- I-8. At times pertinent to the complaint the defendant IRVING GOLD-STEIN was Executive Vice President, Treasurer, a director and "controlling person" of Commonwealth.
- I-9. At times pertinent to the complaint the defendant PETER GET-TINGER was a director and "controlling person" of and counsel to Commonwealth.
- I-10. At times pertinent to the complaint the defendant H. IGOR ANSOFF was a director and "controlling person" of Commonwealth
- I-11. At times pertinent to the complaint the defendant GOTTFRIED von MEYERN-HOHENBERG was a director and "controlling person" of Commonwealth.
- I-12. At times pertinent to the complaint the defendant THEODORE R. SAYERS was a director and "controlling person" of Commonwealth.
- I-13. At times pertinent to the complaint the defendant LOUIS J. NICASTRO was a director and "controlling person" of Commonwealth.
- I-14. At times pertinent to the complaint the defendant PETER HUANG was a director and "controlling person" of Commonwealth.
- I-15. At times pertinent to the complaint, N. C. EARL JR. was a director and "controlling person" of Commonwealth. Said N. C. EARL, JR. is now deceased. His executor is PHILIP M. DRAKE.
- I-16. At times pertinent to the complaint the defendant KLEINER, BELL & CO., INC. ("Kleiner Bell") was a corporation organized and existing under and by virtue of the laws of the State of Delaware, transacting business in the Southern District of New York and was a "controlling person" of Commonwealth.

- I-17. At times pertinent to the complaint the defendant KLEINER, BELL & CO. was a partnership doing business in the Southern District of New York and was a "controlling person" of Commonwealth.
- I-18. At times pertinent to the complaint the defendant 140 ASSO-CIATES was a partnership consisting of BURT KLEINER, LIONEL BELL and RALPH SHAPIRO, with a principal office at 140 Broadway, New York, New York.
- I-19. At times relevant, each of 140 ASSOCIATES, BURT KLEINER, LIONEL BELL and RALPH SHAPIRO was a "controlling person" of Commonwealth.
- I-20. At times pertinent to the complaint the defendant I.O.S., LTD. (S.A.) ("IOS"), was a corporation doing business in the Southern District of New York, and was a "controlling person" of Commonwealth.
- I-21. At times pertinent to the complaint Kleiner Bell served as dealermanager, financial consultant and investment banker for Commonwealth.
- I-22. At times pertinent to the complaint the defendant ARTHUR YOUNG & COMPANY was a partnership doing business in the Southern District of New York, prepared or certified financial statements and earning statements of Commonwealth and certain of its subsidiaries and affiliates, and permitted its name to be used in connection therewith.
- I-23. At times pertinent to the complaint the defendant RICHARD A. SAKAZEN was a Vice President and "controlling person" of Commonwealth.
- I-24. At times pertinent to the complaint the defendant RODNEY W. LOEB was a Vice President and "controlling person" of and performed legal services for Commonwealth.
- I-25. At times pertinent to the complaint the defendant ARNE KALM was a Vice President and "controlling person" of Commonwealth.
- I-26. At times pertinent to the complaint the defenant SIDNEY KIBRICK was a Vice President and "controlling person" of Commonwealth.
- I-27. At times pertinent to the complaint the defendant HOWARD D. MARTIN was a Vice President and "controlling person" of Commonwealth.
- I-28. At times pertinent to the complaint the controlling stockholders of Kleiner Bell were and are defendants Burt Kleiner, Lionel Bell and Ralph Shapiro, all of whom, together with defendants RICHARD A. FRELING

and Kleiner Bell, have had numerous business and other transactions with Commonwealth.

I-29. At times pertinent to the complaint securities of Commonwealth, including convertible debentures, convertible preferred, warrants and shares of stock, were listed and traded on the American Stock Exchange, a national securities exchange, except for the period after July 22, 1969 when the American Stock Exchange suspended trading in Commonwealth stock and convertible debentures on said Exchange. On that date Commonwealth common stock was traded on the American Stock Exchange at \$8.125, Commonwealth convertible debentures were traded at a price of \$67, and Commonwealth preferred was traded at a price of \$16.25.

I-30. On or about August 1, 1969, the Securities and Exchange Commission directed that over-the-counter trading in Commonwealth securities be suspended. On that date the over-the-counter and the high and low bid for Commonwealth stock was \$43/4 and \$41/4, respectively.

I-31. On December 23, 1969, over-the-counter trading in Common-wealth common stock was resumed, at which time the over-the-counter price of Commonwealth common stock was as low as \$1.50 bid, \$2.50 asked.

* I-32. Commencing on or about January 1, 1968, defendants Commonwealth, Burt Kleiner, Rozet, Kibrick, and certain other defendants, acting in close concert and conspiracy, agreed to acquire Commonwealth securities and cause Commonwealth to embark upon a course of dealings which operated as a fraud upon plaintiffs and their class, enter into financial transactions which had no legitimate business purpose, disseminate false information, withhold material information and "dress up" Commonwealth's financial statements, all of which artificially manipulated and influenced, and was designed to so influence and manipulate, the market price of Commonwealth securities.

* I-33. Commencing on or about January 1, 1968, defendants concealed and omitted to disclose to plaintiffs and their class the said conspiracy and the nature and extent of the and its principals, each of which was a material fact due to be disclosed to plaintiffs.

I-34(a)—(g). Plaintiffs claim that defendants had a duty during the

^{*} Same as I-32. * Insofar as they referred to the year 1968, shall be construed to tender only those issues expressly set forth in ¶ II(c)(1) of Second Pretrial Conference Order of May 24, 1971.

period commencing October 16, 1968, and ending August 1, 1969, to disclose fully to the class but omitted to so disclose to the class (in Commonwealth's October 16, 1968 and November 27, 1968 Registration Statements, prospectuses, its proxy statements, its press releases, or otherwise) the following material facts, each of which should have been disclosed to the class in order to make other statements to the class not misleading:

- (i) difficulties, high construction costs, doubtful receivables and losses in connection with California real estate developments previously owned by Sunset International Petroleum Co. were not adequately disclosed;
- (ii) purchase by Commonwealth officers and directors and Kleiner Bell group of interests in oil and gas exploration programs of Sunset International Management Company was not adequately disclosed;
- (iii) over-expenditures incurred in connection with such oil and gas exploration programs were not adequately disclosed;
- (iv) the inability of Commonwealth and Seeburg to obtain bank or institutional financing and lines of credit in late 1968 was inadequately disclosed;
- (v) the contingent liability of Commonwealth to Seeburg stock-holders, on the allegation that the terms offered to Seeburg stockholders for the sale or exchange of their Seeburg stock to Commonwealth were less favorable than the terms given to Coleman and Nicastro, was not adequately disclosed;
- (vi) the relationship between Commonwealth and the Kleiner Bell group was not adequately disclosed.

Among the acts and omissions done in furtherance of said conspiracy are the following:

- * (h) Commencing October 16, 1968 Commonwealth acquired 1,974,205 shares of stock of The Seeburg Corporation from others in exchange for Commonwealth's preferred stock and warrants, pursuant to a prospectus which was misleading or deceptive in that it omitted to disclose accurately and fully Commonwealth's financial condition and earnings and in that it omitted to disclose fully Commonwealth's relationship with Kleiner Bell and its principals and omitted to disclose Commonwealth's liability to public stockholders of The Seeburg Corporation for Commonwealth's having cooperated with defendants Coleman and Nicastro in the breach of their fiduciary duty to The Seeburg Corporation and its stockholders.
 - (i) In September 1968, Commonwealth acquired two office buildings

^{*} Same as I-32.

located in Worcester, Massachusetts. On December 31, 1968, the stock of the corporation which owned the office buildings was purportedly sold by Commonwealth for \$2,200,000 to principals of defendant Kleiner Bell at a time when defendant Kleiner Bell was acting as financial consultant to Commonwealth. In connection with said transaction, Commonwealth wrongfully included \$2,200,000 in revenues for the year ending December 31, 1968 and \$700,000 in profits for the year ending December 31, 1968. Said 1968 revenues and profits were audited and certified to by Commonwealth's public accountants, defendant Arthur Young & Company. In connection with said transaction, defendants concelled that Commonwealth had received a very small down payment and that of the cash received a major portion of said cash represented prepaid interest.

- * (j) Commencing in late 1968 Commonwealth was unable to obtain needed bank or institutional financing. The failure to obtain financing was bound to and actually did make it impossible for Commonwealth to consummate the various transactions which the company had announced. The failure to disclose said financing difficulties had the effect of artificially inflating and maintaining the market price of Commonwealth stock.
- (k) On December 31, 1968, Commonwealth acquired 4,000 acres of unimproved land in Hawaii for a consideration of \$1,736,800. On the same date, the said 4,000 acres were purportedly sold by Commonwealth for \$5,450,000 to a partnership composed of defendants Burt Kleiner, Lionel Bell, Ralph Shapiro and Richard A. Freling at a time when defendant Kleiner Bell was acting as financial consultant to Commonwealth. In connection with said transaction, Commonwealth wrongfully reported \$5,450,000 in revenues for the year ending December 31, 1968 and \$2,963,200 in profits for the year ending December 31, 1968, thereby concealing from its stockholders and the investing public that Commonwealth had sustained an operating loss for the Fourth Quarter of 1968. Commonwealth's December 31, 1968 balance sheet and 1968 earnings report of revenues and profits were audited and certified by Commonwealth's public accountants, defendant Arthur Young and Company, and said accountants permitted their name to be used in connection therewith. Said balance sheet and earnings statement omitted to disclose and concealed that Commonwealth had purchased and sold the Hawaiian property on the same day; that

^{*} Same as I-32.

Commonwealth has seceived a relatively small down payment; that a major portion of said down payment represented pre-paid interest; and that there was considerable uncertainty as to the amount of additional costs to be incurred by Commonwealth in connection with improving said Hawaiian properties. It was further concealed that a selling agreement with a land sale organization to retail the property was cancelled and a new agreement at a higher commission was entered into and that Commonwealth sustained a \$800,000 loss by virtue of cancelling said prior selling agreement. The above series of transactions were entered into for the purpose of permitting Commonwealth to record a fictitious and illusory profit in its 1968 earnings, thereby causing the market price of Commonwealth stock to reach and be maintained at artificially inflated prices.

- (1) Beginning in January 1969, Commonwealth engaged in a "tender battle" with Kinney National Service, Inc. for control of Warner Brothers Seven-Arts. The attempt to gain control failed after Commonwealth had spent very large amounts in fees and expenses in connection with said tender battle. At that time, Commonwealth was in very serious financial difficulties and could not meet all its current obligations. The attempted take-over, which was widely publicized in the general news media and in financial publications, caused the price of Commonwealth's securities to rise considerably. In view of Commonwealth's poor financial condition at the time of the dissemination of such information to the Press, the Commonwealth tender offer was reckless in the extreme, was in fact impossible to conclude successfully and upon information and belief was undertaken with no real hope of success, but rather for the purpose of missing and manipulating the market price of Commonwealth's securities.
- (m) On January 30, 1969, Commonwealth acquired all of the outstanding shares of the 5½% cumulative preferred stock of George A. Fuller Company ("Fuller") for a cash consideration of \$3,000,000. In connection with said transaction, Commonwealth failed to disclose the relationship and agreements entered into with Kleiner Bell in connection with the Fuller transaction, including Kleiner Bell's simultaneous acquisition of Contractors General Insurance Agency, Inc., a Texas corporation. During 1969, in further implementation of the conspiracy, Commonwealth failed to disclose the existence and/or extent of Commonwealth loans to Fuller and Commonwealth's guarantees of Fuller's obligations, the extent of Fuller's operating losses and the fact that Fuiler's liabilities exceeded its assets.

- (n) On February 28, 1969, Commonwealth entered into an agreement with Dart Industries, Inc. for the purchase of Dart's Rexall drug manufacturing, distribution, franchising and retail operations. Said agreement required Commonwealth to make a down payment of \$5,000,000 and further provided for Commonwealth's payment before the closing date of an additional \$20,000,000 in cash. The agreement further provided that if Commonwealth defaulted, Rexall would keep as liquidated damages the aforesaid \$5,000,000 down payment. Thereafter, Commonwealth defaulted and Dart has retained the \$5,000,000 deposit. In connection with said transaction, Commonwealth failed to disclose to its stockholders and the investing public that it was experiencing substantial problems in obtaining the financing for this transaction and misrepresented the default provisions of the contract.
- (o) On March 18, 1969, Commonwealth entered into an agreement with Martin S. Ackerman, Chairman, President and owner of 86,000 unregistered and unlisted shares of Perfect Film & Chemical Corporation ("Perfect"), whereby Commonwealth agreed to purchase said 86,000 shares at a price of \$81.35 per share or a total consideration of \$7,000,000, which was paid on or about that day. The market price on the New York Stock Exchange at that time was \$38.50 per share, Commonwealth paying a premium of approximately \$3,500,000 for unregistered and unlisted stock of Perfect. The 86,000 shares of Perfect were acquired with a view towards a subsequent merger of Perfect and Commonwealth. In late 1969, Commonwealth recorded an extraordinary loss in connection with this transaction amounting to \$5,750,000. By failing to write down the carrying value of Perfect after the merger discussions with Perfect had been suspended, defendants caused Commonwealth securities to be maintained at artificially inflated prices.
- (p) In connection with various acquisitions, Commonwealth had given contractual undertakings to register its stock used to make said acquisitions. During the period complained of Commonwealth failed to disclose to plaintiffs and their class that Commonwealth was in violation of various contractual undertakings to register. In addition, Commonwealth failed to disclose to plaintiffs and their class that under the terms of some of said acquisitions agreements Commonwealth was obligated to issue additional Commonwealth securities. The issuance of said additional shares would

have the effect of diluting the equity of the Commonwealth shareholders.

- (q) Commencing in early 1969, Commonwealth entered into various financing arrangements with IOS. Commonwealth failed to disclose to plaintiffs and their class the cost of borrowing or the particulars of the financing arrangements with IOS.
- (r) In June 1969, Commonwealth acquired Shelter Cove Co., Ldt., a Nevada corporation, and Maple-Sierra Corp., a California corporation. These acquisitions were improperly treated as poolings of interests in the 1969 First Quarter Earnings Report and Commonwealth consequently improperly reflected \$697,884 in net income in said Earnings Report.
- * (s) During 1968 and 1969, Sunset International Management Company, a sub-subsidiary of Commonwealth, operated oil and gas exploration programs involving the sale of participating interests to the public. During 1968 and 1969 Commonwealth concealed and omitted to disclose to plaintiffs and their class large amounts of overexpenses incurred in connection with said programs.
- * (t) During 1968 and 1969 Commonwealth experienced difficulties, high construction costs and losses in connection with certain real estate developments in which it had an interest, but concealed and omitted to disclose fully and accurately to plaintiffs and their class said difficulties, costs and losses.
- * I-35. During the period commencing January 1, 1968 to and including August 1, 1969, Commonwealth failed to disclose material facts and continued to disseminate and release financial information concerning Commonwealth which was materially false and misleading. Said omissions and materially false and misleading information were contained in, among other things, the October 16, 1968 prospectus filed with the SEC and used in connection with said Seeburg tender offer Commonwealth's annual report for 1968, its proxy statement dated June 24, 1969, various press releases and Registration Statements filed with the Securities and Exchange Commission.
- * I-36. The failure to disclose the truth concerning Commonwealth's financial condition had the effect of causing Commonwealth securities to trade at artificially inflated market prices.

^{*} Same as I-32.

- * I-37. Plaintiffs and the class in purchasing Commonwealth securities were misled to their damage and loss by the artificially inflated market prices thereof at the time of purchase.
- * I-38. The defendants knew and/or should have known that the Registration Statements and other writings referred to herein were false and misleading and would be relied upon by the financial community and the public in connection with purchases of Commonwealth securities.
- * I-39. All of the defendants approved, authorized and/or acquiesced in the false and misleading statements herein complained of and/or otherwise aided and abetted in the implementation of the wrongs complained of herein.
- I-40. The acts and transactions complained of herein were effected by the means and instrumentalities of interstate commerce or the mails.
- I-41. Many of the acts and transactions constituting the violation occurred in the Southern District of New York.

COUNT II AGAINST ALL DEFENDANTS

- II-1. At all times herein mentioned and at the time of the commencement of this action and of the transactions of which plaintiffs complain herein, plaintiffs Sherlee Land, Sidney and Mary Abbey, Shirley Goldman, Martin De Stefano, Nancy Spitalnik, Christian Touchtler, Bertha H. Meyers and Phil Meyers were, and still are the owners and holders of the common stock of Commonwealth.
- II-2. Said plaintiffs bring this action against the defendants above named derivatively on behalf of Commonwealth and all other stockholders similarly situated. Plaintiffs fairly and adequately represent the interests of stockholders similarly situated in enforcing the rights of Commonwealth.
- II-3. This derivative action is not a collusive one to confer on a Court of the United States jurisdiction over any claims set forth herein over which it would not otherwise have jurisdiction.
- II-4. At all times hereinafter mentioned, Commonwealth was and is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with offices at 8920 Wilshire Boulevard, Beverly

^{*} Same as I-32.

Hills, California, and 745 Fifth Avenue, New York, New York. The capital stock of Commonwealth is made up of two classes of securities consisting of 10,000,000 of \$1 par value preferred stock of which approximately 2,133,633 shares are issued and outstanding, and 30,000,000 shares of stock of which 8,404,700 shares are issued and outstanding. The common stock of Commonwealth is listed on the American Stock Exchange, although trading in said stock was suspended on or about July 22, 1969; and, after an over-the-counter market had developed therein, was likewise suspended from trading in the over-the-counter market by the Securities and Exchange Commission on August 1, 1969. To this date, the suspension of trading on the American Stock Exchange is still in effect.

II-5. At all times pertinent to the complaint, the following defendants were directors and/or officers of Commonwealth:

Chairman of the Board of A. BRUCE ROZET Directors and President

OLIVER A. UNGER Director

Director and Executive Vice-IRVING GOLDSTEIN

President and Treasurer

Director, Secretary, and PETER GETTINGER

General Counsel

Director THEODORE R. SAYERS Director H. IGOR ANSOFF

GOTTFRIED VON MEYERN-

BENJAMIN F. BRESLAUER

Director **HOHENBER** Director PETER HUANG Director LOUIS J. NICASTRO RICHARD A. SARAZEN Vice-President RODNEY W. LOEB Vice-President Vice-President SIDNEY KIBRICK ARNE KALM Vice-President Vice-President HOWARD D. MARTIN Controller

Said defendants are hereinafter referred to collectively as the "Commonwealth Group."

II-6. At all times hereinafter mentioned, the Commonwealth Group defendants, or some of them, were in possession and control of the property and assets of Commonwealth and of its affairs.

II-7. Defendant Kleiner, Bell & Co., Inc., hereinafter referred to as

"Kleiner Bell," is a corporation with its principal place of business at 8920 Wilshire Boulevard, Beverly Hills, California, and was at all times mentioned herein the investment banker for, and the financial consultant to Commonwealth. Kleiner Bell regularly transacts business in the State County and Southern District of New York, through its affiliate and managing agent, Kleiner, Bell & Co., a partnership, members of the New York and American Stock Exchange.

II-8. Arthur Young & Company, a partnership, doing business in the Southern District of New York, served as accountants to Commonwealth at the time of the transactions complained of herein and during the period for which financial information had been prepared for proxy solicitations, financial statements and registration reports.

II-9. The jurisdiction of this Court is based upon Section 27 of the Securities Exchange Act of 1934 [15 U.S.C. §78aa] and on the Doctrine of Pendent Jurisdiction. This count arises under Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 as amended [15 U.S.C. §79j (b), 78n (a)], Rule 10b-5 promulgated thereunder and common law.

II-10. Beginning in 1968 and thereafter, the defendants, acting individually and in concert, employed or acquiesced in the employing of deceptive devices, schemes and artifices to defraud; made untrue statements of material fact and omitted material facts necessary in order to make statements not misleading; and engaged in acts, practices and a course of business which were intended to and did operate as a fraud upon Commonwealth, with respect to all of the transactions as hereinafter more specifically set forth, through the use of the mails, telephone and other means and instrumentalities of interstate commerce in connection with the sale, purchase or exchange of securities.

II-11. In a proxy statement dated June 24, 1969, Commonwealth's directors and officers solicited approval of the following transaction: Commonwealth was to purchase the Rexall Drug operations from Dart Industries, Inc. for an amount equal to their net asset value as of January 31, 1969, plus \$6,466,000 and an amount equal to 9,744 times the number of days in the period from July 1, 1969 to the closing date. The net asset value was determined to be approximately \$56,000,000, making a total purchase price of \$62,500,000, of which \$5,000,000 was paid by Commonwealth in cash on March 10, 1969. The balance payable at the closing scheduled

for August 8, 1969 was to paid \$20,000,000 in cash, approximately \$12,500,000 in the form of a promissory note of Commonwealth, and the remainder in one million shares of a new series of convertible preferred stock of Commonwealth, together with other consideration more specifically stated in the contract.

- II-12. As a condition to the closing, Commonwealth was to:
- (a) obtain requisite shareholder and government approval of the issuance of the new preferred stock;
- (b) obtain from Dart Industries, Inc. and from certain of its creditors their consent to the transaction;
- (c) obtain from each party satisfactory legal opinions from counsel;
- (d) obtain registration under the Securities Act of 1933 of the new convertible preferred stock and the common stock issued upon conversion;
- (e) obtain listing of such common stock on each national securities exchange on which Commonwealth's common stock shall then be listed and assurance of the accuracy, as of the closing date, of representations and warranties.
- II-13. The agreement further provided that it would automatically terminate (and Dart Industries, Inc. would be entitled to keep as liquidated damages the \$5,000,000 down payment heretofore paid it by Commonwealth), if Commonwealth did not obtain by August 5, 1969 the requisite approval of the holders of its common stock and convertible stock and issue and deliver to Dart Industries Inc. one million shares of the new series preferred stock.
- II-14. On June 24, 1969, pursuant to the solicitation of a proxy for a meeting to vote on the acquisition of Rexall, the directors and officers of Commonwealth solicited a proxy from the plaintiffs and all other holders of the common stock of Commonwealth.
- II-15. Commonwealth represented in its proxy statements and other statements furnished to the stockholders, to the public and to governmental agencies, that it was negotiating with banks to obtain a commitment for a revolving credit arrangement and other financing which Commonwealth believed would comply with the requirements of the agreement. It was

further implied that \$12,000,000 had already been obtained to finance the Rexall acquisition.

- II-16. At the time said representations were made in the proxy statement and fiancial statements, the directors and officers of Commonwealth knew, or in the exercise of reasonable judgment should have known that such representations were materially false and misleading since said statements failed to reveal that the banks with whom they negotiated for a revolving credit had already communicated their refusal and unwillingness to grant such revolving credit, and that other potential creditors had refused to advance sufficient funds, thereby rendering Commonwealth incapable of consummating the Rexall transaction.
- II-17. The directors and officers of Commonwealth approved the Rexall transaction and caused Commonwealth to pay the \$5,000,000 down payment although said directors and officers knew or should have known that said revolving credit and other financing was not obtainable.
- II-18. In recognition of the unobtainability of bank credit or other financing to consummate the Rexall transaction, the Commonwealth Group defendants and Kleiner Bell caused Commonwealth to enter into other transactions to attempt to raise the funds to conclude the Rexall transaction, as follows:
- (a) Incurring an obligation to pay non-refundable commitment fees and costs of \$300,000 for a loan of \$10,000,000 plus interest of \$123,000;
- (b) Issuing 300,000 shares of Commonwealth common stock at \$2 per share although said stock had a market value of approximately \$6 per share;
- (c) Issuing long-term convertible debentures or promissory notes in the amount of \$20,000,000 offering to pay interests varying from 7% to 13% for such funds and issuing or undertaking to issue 550,000 shares of Commonwealth stock and Commonwealth warrants, exercisable at \$17.25 per share over a long period of time, for 1,250,000 shares of Commonwealth common stock.
- (d) Paying or incurring obligations to pay legal and other substantial fees and costs without any assurance that the proposed Rexall transaction could be consummated.

- II-19. As a result of the foregoing, said directors and officers caused Commonwealth to incur losses of over \$6,623,000 without benefit to Commonwealth, which constitutes a waste and dissipation of the assets of the corporation, and improvident and reckless management of the business of Commonwealth and a breach of fiduciary duty to Commonwealth.
- II-20. The Commonwealth Group defendants caused Commonwealth to represent in its proxy statement dated June 24, 1969 that Commonwealth obtained an extraordinary net gain of \$269,000 as the result of the withdrawal by Commonwealth of a proposed acquisition of Warner-Bros. Seven Arts, Limited. Said gain was never realized and a representation that the company made such a gain is a material misrepresentation made for the purpose of obtaining proxies and stockholder approval of the Rexall transaction.
- II-21. In March 1969, Commonwealth acquired, for investment only, 86,000 shares of common stock of Perfect Film and Chemical Corporation at an aggregate cost of \$7,000,000. Said stock was not salable on the open market. In the proxy statement dated December 2, 1969, it was stated that said stock was purchased from controlling stockholders at a premium \$3,350,000.
- II-22. The Commonwealth Group defendants caused Commonwealth to represent in its proxy statement, dated June 24, 1969, that the carrying value of this stock is \$7,000,000, and that there was no impairment of value. The Commonwealth Group defendants and Kleiner Bell knew, or in the exercise of reasonable business judgment should have known, that said representations were false and misleading since the fair and reasonable value of said investment stock was under \$2,000,000, and since the carrying value was substantially impaired. Said misrepresentations were made for the purpose of obtaining proxies and stockholder approval of the Rexall transaction and in furtherance of a deceptive scheme to defraud Commonwealth in connection with the sale of said stock to Commonwealth at a grossly excessive price.
- II-23. The aforesaid transaction resulted in a loss to Commonwealth of approximately \$5,000,000, which constitutes a waste of Commonwealth's assets, an improdent and reckless management of the business affairs of Commonwealth by the Commonwealth Group defendants and Kleiner Bell, and a breach of fiduciary duty to Commonwealth.

II-24. In 1968, Commonwealth agreed to deliver its stock with a value of \$1,500,000 for the purchase of real property consisting of two office buildings in Worcester, Massachusetts. In the same year, said real property was sold to four individuals who are principals of Kleiner Bell. In consideration therefor Commonwealth received a note for \$2,180,000 payable annually at the rate of \$150,000 plus interest at 11% per annum to September 4, 1983. In addition, Commonwealth received cash of approximately \$281,400. It was represented in the proxy statement of June 24, 1969, that the aforesaid transactions would result in a profit of approximately \$750,000.

II-25. The ammonwealth Group defendants fraudulently concealed the fact that an agreement had been arranged between the parties to this subsequent transaction either to resell the real property to Commonwealth at the same or a higher price paid by the four individuals, or to cancel the aforesaid notes and rescind the entire transaction. The Commonwealth Group defendants so acted for the purpose of creating the appearance of a profit in the approximate amount of \$750,000 on the 1968 financial statement of Commonwealth, while knowing that said profit would never be realized.

II-26. On December 31, 1968, Commonwealth completed the acquisition of approximately 4,000 acres of unimproved land in Hawaii for a cash consideration of approximately \$1,656,800, subject to a mortgage of \$80,000 which was later discharged by payment. The aforesaid real property was sold on the same day, December 31, 1968, for \$5,400,000 in notes and \$541,000 in cash to a partnership composed of Messrs. Kleiner, Bell and Shapiro, who are controlling stockholders of Kleiner Bell, and Richard A. Freling. It was represented in the proxy statement that said transaction would result in a profit in the amount of \$2,963,200. At the time of this transaction, Commonwealth was critically short or cash and said transaction further depleted Commonwealth's cash position.

II-27. The Commonwealth Group defendants fraudulently concealed the fact that an agreement had been arranged between the parties to this transaction either to resell said real property to Commonwealth at the same price or higher price paid by the partnership or to cancel the indebtedness and rescind the entire transaction. The Commonwealth Group defendants so acted for the purpose of creating the appearance of a profit in the ap-

proximate amount of \$2,963,200 on the 1968 financial statement of Commonwealth, while knowing that said profit would never realized. Moreover, a consummation of the aforesaid agreement to resell the real property to Commonwealth or rescind the sale would result in a loss to Commonwealth of over \$2,963,200.

II-28. At the time Commonwealth acquired said real property, Commonwealth concelled a retail selling contract with Hawaiian Ocean View Estates, and replaced it with a contract with another real estate company, under which contract Commonwealth became obligated to pay higher commissions on subsequent sales of said Hawaiian land. After the purchase by the partnership of said Hawaiian land, the partnership became obligated to pay said commissions. The partnership objected to paying such commissions and presented a baseless claim against Commonwealth arising out of their obligation to pay said commissions. Defendants Kleiner, Bell, Shapiro, Freling, and Kleiner Bell caused Commonwealth to settle said claim under terms unfavorable to Commonwealth.

II-29. The foregoing Hawaiian real property transactions represent an improvident and reckless management of the business affairs of Commonwealth and a breach of fiduciary duty to Commonwealth.

II-30. Commonwealth's financial advisor Kleiner Bell and Commonwealth's accountants Arthur Young & Company knew that because of the corporation's practice of reporting all contingent future profits from real estate sales in the period in which the sale occurred, the sale of the Hawaiian real property to said partnership would generate a \$5,450,000 revenue item on the corporation's financial statement, although only approximately \$541,000 in usable funds would be available to the company. No footnote or other explanation appears in the proxy solicitation to indicate how much of the \$22,758,474 included as revenues from real estate operations were sales of property to others which did not, in fact, generate any usable funds. The foregoing constitutes a fraudulent concealment of material facts which renders said proxy solicitation false and misleading.

II-31. At the time of the attempted acquisition of the Rexall operation, the Commonwealth Group defendants and Kleiner Bell were causing Commonwealth to default on the payment of taxes and mortgages on properties held by Sunset International Petroleum Corporation (hereinafter referred to as "Sunset"), its real estate subsidiary in California, to abandon significant amounts of other real property and to defer foreclosure of various mortgages held by Sunset. The aforesaid constitutes a waste of Commonwealth's assets, an improvident and reckless management of the business affairs of Commonwealth and a breach of duty to Commonwealth.

- II-32. The proxy statement dated June 24, 1969, failed to reveal the extent of the corporate assets which were being abandoned and the extent of the resulting losses to Commonwealth. Said omissions were caused by the Commonwealth Group defendants and Kleiner Bell for the purpose of obtaining proxies and stockholder approval of the Rexall transaction and rendered said proxy statement false and misleading.
- II-33. Under an agreement by which Commonwealth acquired Sunset, Sunset was obligated to pay Commonwealth \$3,000,000 with interest at 4% per annum, and additional consideration based upon the value of the Commonwealth securities delivered under various exchanges.
- II-34. In March 1969, the Board of Directors of Commonwealth caused Commonwealth to forgive and cancel said \$3,000.000 indebtedness of Sunset.
- II-35. Said forgi eness and cancellation was made for inadequate consideration and constitutes a waste of Commonwealth's assets and constitutes an improvident and reckless management of the business affairs of Commonwealth and a breach of fiduciary duty to Commonwealth.
- II-36. Defendant Kleiner Bell was acting as the financial consultant to Commonwealth at the time of the above alleged acts and transactions, was in a fiduciary relationship to Commonwealth, had knowledge of the foregoing and was an active participant in the preparing and disseminating of the aforesaid misrepresentations and misleading omissions and in the other wrongs as hereinbefore alleged and profiting thereby.
- II-37. Defendant Arthur Young & Company was acting as the accountant for Commonwealth at the time of the above alleged acts and transactions, had knowledge of the foregoing and was an active participant in the preparing and disseminating of the misrepresentations and misleading omissions as aforesaid.
- II-38. Defendants Rozet, Kibrick, Goldstein, Breslauer and Kleiner Bell first gained control of Commonwealth's management in early 1968 when, as executives of Sunset, of which defendant Burt Kleiner was the

principal stockholder, they arranged for Commonwealth's acquisition of Sunset in a transaction which provided, among other things, that defendant Rozet was to become president, a director and chief executive officer of the combined company and president, a director and chief executive officer of Goldstein were to receive \$735,000 in Commonwealth's convertible 5% debentures, convertible at a price of \$7 per share, for a total cash purchase price of \$525,000. These purchases were guaranteed in substantial part by Burt Kleiner.

- II-39. The Commonwealth Group defendants, acting in close concert and in conspiracy with Kleiner Bell, Burt Kleiner, Ralph Shapiro and Lionel Bell, then embarked upon a course of reckless mismanagement of Commonwealth's affairs, waste of Commonwealth's assets and self-dealing.
- II-40. In furtherance of said consipiracy said defendants fraudulently represented to Commonwealth that the fair and reasonable value of said convertible debentures was \$525,000, while knowing that said debentures have a value in excess of \$525,000. As a result of the foregoing, Commonwealth will sustain substantial losses, and the defendants Rozet, Goldstein, Kibrick, and Breslauer will realize unlawful profits which belong to Commonwealth.
- II-41. In a proxy statement distributed to stockholders dated June 24, 1969, Commonwealth was caused to state, among other things, that in January of 1969 Commonwealth purchased for investment purposes from Contractors General Insurance Agency, Inc., all of the outstanding shares of preferred stock of George A. Fuller Company, Inc. (hereinafter "Fuller") for a cash consideration of \$3,000,000, and that since January 1969 Commonwealth had extended technical and financial assistance to Fuller in the form of guarantees of certain of Fuller's secured bank loans and has agreed to lend Fuller \$2,500,000, of which \$1,950,000 had been advanced to the date of said proxy statement.
- II-42. The foregoing statements are false and misleading in material part and omit material facts necessary to make the description of the transaction accurate in that the proxy statement fails to disclose the following:
- (a) Cloyce Box (hereinafter "Box"), Fuller's chairman and former chief executive officer, was a seller of a substantial portion of the Fuller stock that Commonwealth purchased.

- (b) Box had purchased Fuller preferred and common stock for approximately \$12,000,000, which Box borrowed from the Chase Manhattan Bank.
- (c) At the time of the purchase by Commonwealth, a balance of \$9,700,000 was due to the Chase Manhattan Bank on said loan secured by the stock of Fuller.
- (d) Commonwealth assumed and guaranteed the obligation of Box to Chase Manhattan Bank and caused Chase Manhattan Bank to release and discharge Box from any personal obligation to Chase Manhattan Bank, even though at the time of said transaction the loan from Chase Manhattan Bank to Box was in default.
- (e) Commonwealth gave Box and Tramell Crow, officers of Fuller, employment contracts at excessive salaries.
- (f) Chase Manhattan Bank has demanded that Commonwealth pay the balance of the aforesaid loan to Box in the sum of \$9,700,000, with interest.
- (g) Commonwealth was required to agree to cause Fuller to purchase real property owned by Box and Crow for \$125,000 although said real property was worth substantially less.
- (h) As a result of the foregoing, Commonwealth has been caused to pay over \$17,700,000 for the purchase of said preferred stock of Fuller, and that said payments are to be made not only to Contractors General Insurance Agency, Inc., but also to Box, who is the owner of 20% of the common stock of Fuller.
- II-43. The Commonwealth Group defendants and Kleiner Bell knew or should have known that the actual cost of acquisition of the preferred stock of Fuller was more than the stated \$3,000,000 and the foregoing constitutes a material misrepresentation and a fraudulent omission of material facts in furtherance of a scheme to defraud Commonwealth by inducing Commonwealth to purchase the preferred stock of Fuller.
- II-44. In January of 1969, and simultaneously with the aforesaid purchase of preferred investment stock of Fuller by Commonwealth, 80% of the common stock of Fuller was purchased for \$1,750,000 by 140 Associates, a partnership consisting of Burt Kleiner, Lionel Bell and Ralph Shapiro, whose principal office is at 140 Broadway, New York City, New

York. The aforesaid Burt Kleiner, Lionel Bell and Ralph Shapiro are the controlling stockholders of Kleiner Bell.

II-45. Kleiner Bell is negotiating for, or has actually sold 80% of the Fuller common stock purchased as aforesaid to Commonwealth at a price of \$2,000,000 to 2,500,000, thus enabling 140 Associates to obtain a profit of between \$250,000 and 750,000.

II-46. Kleiner Bell and the Commonwealth Group defendants have inadvertently represented to Commonwealth that the value of said common stock is between \$2,000,000 and \$2,500,000, whereas, said defendants knew that the fair and reasonable value was substantially less than \$1,750,000, which constitutes a material misrepresentation in furtherance of a scheme a defraud Commonwealth by inducing Commonwealth to purchase the common stock of Fuller.

II-47. Fuller is engaged in a general contracting business primarily involved in the construction of major industrial, commercial and governmental projects throughout the United States. In or about January of 1969, Fuller was unable to pay its share of the capital required as one of the contractors in a project known as the Orville Dam Project, and arbitration was pending by which the MacNamara Company was attempting to compel Fuller to contribute \$4,000,000 as its share of the capital to be contributed to said Orville Dam Project. As a result of said arbitration proceedings, Fuller was directed to pay approximately \$5,000,000 in connection with such Orville Dam Project As of January 1969, it was foreseeable that the loss susbtained by the contractors, including Fuller, on the Orville Dam Project exceeded \$12,000,000, and that Fuller would be required to pay its share of said loss, resulting in additional substantial obligation on the part of Fuller.

II-48. The aforesaid facts were known, or should have been known, upon reasonable inquiry by the Commonwealth Group and Kleiner Bell at the time of the purchase of the Fuller preferred stock by Commonwealth, but were not disclosed to Commonwealth. Furthermore, at the time that Kleiner Bell was attempting to sell the Fuller common stock to Commonwealth, it was known, or should have been known, that Fuller had defaulted on other obligations and indebtedness, and that he was insolvent, but this was not disclosed to Commonwealth.

- II-49. As a result of the foregoing fraudulent acts, misrepresentations and misleading omissions of material facts perpetrated by the aforesaid defendants in furtherance of a scheme to defraud Commonwealth, in violation of their fiduciary duties to Commonwealth, Commonwealth will be required to pathe obligation of Box to the Chase Manhattan Bank, as well as other obligations which it has guaranteed or assume on behalf of Fuller and/or Box, which will result in losses to Commonwealth in excess of \$20,000,000.
- II-50. The plaintiffs believe that Commonwealth is presently contemplating the sale of a substantial equity position to International Overseas Services Ltd. (S.A.), its associates and affiliates (hereinafter "I.O.S."). This company has been barred from selling securities in the United States of America by action of the Securities and Exchange Commission in 1965 and 1966.
- II-51. Because the ownership of Commonwealth is diffuse, the sale of a substantial portion of the equity, or of securities convertible to the equity securities of Commonwealth would result in the purchaser acquiring control of Commonwealth.
- II-52. I.O.S. has always maintained that its offices and activities have been conducted outside of the jurisdiction of the United States and that it is not required to comply with the regulatory provisions of the Securities laws of the United States.
- II-53. The plaintiffs further allege on information and belief that Commonwealth is engaged in the sale or mortgaging of susbstantially all of its real property to I.O.S. Such action would materially change the character of Commonwealth's business and the shareholders will be deprived of their right to vote on such action under Delaware Corporation Law.
- II-54. The foregoing impending acts and transactions may cause or have already caused substantial harm and injury to Commonwealth.
- II-55. Plaintiffs pray for an injunction against the issuance of any stock or securities convertible into the common stock of the corporation by Commonwealth to I.O.S. until the shareholders have an opportunity to vote on such transaction on the grounds that control of Commonwealth would thereby pass to parties who are not amenable to the jurisdiction of the United States Courts, who have not in the past complied with the regu-

lations of the United States Securities Laws, and that the shareholders would thereby lose the substantial protection of the disclosure requirements of the Securities Laws and the rules and regulations promulgated thereunder.

- II-56. Plaintiffs pray for an injunction against any sale of the corporate assets which would materially change or eliminate a phase of Commonwealth's business until such proposals have been submitted to the Commonwealth stockholders.
- II-57. Commonwealth has borrowed large sums from I.O.S. and had made various financing agreement with I.O.S., its associates and affiliates. In connection with the aforesaid loans and financing agreements, Commonwealth has given to I.O.S. debentures, convertible debentures and other securities to secure the repayment of said loans and financing agreements.
- II-58. Commonwealth has defaulted or failed to make payments on many of these obligations to I.O.S. and is not at present financially able to carry out the commitments of said financing arrangements.
- II-59. As a result, I.O.S. and its representatives have conspired with the present directors and officers of Commonwealth and with Kleiner Bell in a scheme to take over the management and control of Commonwealth in order to insure Commonwealth's performance of its financial obligations to I.O.S.
- II-60. As a part of this conspiracy and scheme, they have begun to dispose of and liquidate assets of Commonwealth in order to obtain funds to repay I.O.S. and other preferred creditors, to the detriment of Commonwealth and its stockholders.
- II-61. In furtherance of this scheme and conspiracy, the following acts and transactions have taken place:
- (a) They have arranged for the appointment of I.O.S. nominees to the Board of Directors of Commonwealth.
- (b) They have proposed the election of their nominees to the Board of Directors at a special stockholders meeting so that the Board will consist of seven directors, five of whom are representatives of I.O.S. and associated creditors and not of the stockholders of Commonwealth.
- (c) They have caused I.O.S. representaties to be made officers and directors of various subsidiaries of Commonwealth.

- (d) They have had the attorneys for I.O.S. represent and/or manage Commonwealth and its subsidiaries.
- (e) They have caused their representatives to obtain substantial fees, stock options and bonuses from Commonwealth.
- (f) By virtue of their control over Commonwealth, they have caused Commonwealth to cancel commitments to extend new loans to Commonwealth, thereby requiring assets to be liquidated or disposed of in order to meet other financial obligations and also requiring new loans to be obtained at higher cost to Commonwealth.
- (g) By virtue of their control over Commonwealth, they have caused Commonwealth to agree in principle with Gulf and Western to transfer to Gulf and Western all of Commonwealth's interests in "Darling Lili" except for a limited net profit participation, all of Commonwealth's stock in Cavalier Corporation, a wholly owned subsidiary of Seeburg, 50 percent of the stock of Williams Electronics, and a 50 percent interest in Serose Holding, Ltd., a Swiss corporation, and to issue to Gulf and Western 1,250,000 shares of common stock of Commonwealth and to register the same under the Securities Act. This transaction is subject to the approval of certain holders of long-term institutional indebtedness of Seeburg as well as the approval of I.O.S., to whom Commonwealth is indebted, and which debt is secured in part by Commonwealth's interest in Seeburg.
- (h) By virtue of their control over Commonwealth, which in turn has a controlling interest in Seeburg, they have caused Seeburg to call a special meeting of Seeburg's stockholders in order to approve a plan of liquidation of Seeburg by which stock of Commonwealth will be exchanged for stock of Seeburg, and Seeburg will then be liquidated and its assets transferred to I.O.S. in satisfaction of Commonwealth's indebtedness to I.O.S.
- (i) By virtue of their control over Commonwealth, they have caused Commonwealth to agree in principle with Apollo Industries, Inc., for the sale of three Florida land development companies owned by Commonwealth, in return for stock of Apollo Industries, Inc. The exact amount of such stock to be paid to Commonwealth is to be determined after an audit of the three companies.
 - (j) By virtue of their control over Commonwealth, they have

caused Commonwealth to default on various obligations including interest payments on Commonwealth debentures.

- (k) By virtue of their control over Commonwealth, they caused Commonwealth to settle or otherwise dispose of various claims being asserted by Commonwealth for inadequate consideration and have caused Commonwealth to otherwise dispose of various claims being asserted against Commonwealth for excessive consideration, all without proper approval or ratification from stockholders even though certain of said claims have already been made a part of this action.
- II-62. The foregoing transactions are part of a continuing conspiracy and scheme to take over control of Commonwealth and to bring about its liquidation for the beenfit of I.O.S. and other preferred creditors, to the detriment of Commonwealth and its stockholders.
- II-63. Said conspiracy and scheme has already caused damage to Commonwealth and will cause further irreparable damage. Therefore, plaintiffs are entitled to an injunction barring, revoking or rescinding all acts and transactions in furtherance of said conspiracy and scheme.
- II-64. The present officers and directors of Commonwealth and Kleiner Bell have participated in said conspiracy and scheme which has resulted in a waste of Commonwealth's assets and constitutes an improvident and reckless management of the business affairs of Commonwealth and a breach of fiduciary duty to Commonwealth.
- II-65. Demand by the plaintiffs on the Board of Directors of Commonwealth to assert the claims alleged above has not been made for the reason that any such demand would be futile since the Board of Directors of Commonwealth is under the control of those who participated in said wrongs, acted in concert with other defendants named herein, and authorized and approved the acts and transactions complained of; and, therefore, any actions instituted and controlled by the present Board of Directors of Commonwealth to redress the wrongs herein alleged would not be asserted impartially and in good faith as it would constitute bringing actions against themselves and others acting in concert with them.

II-66. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs in Count I pray for judgment:

(A) Awarding said plaintiffs and each member of the class damages

for the wrongs herein complained of;

- (B) Awarding said plaintiffs the expenses of this litigation, including reasonable attorneys' and accountants' fees;
- (C) Granting said plaintiffs and the class such other and further relief as the court may deem just;

and plaintiffs in Count II pray for judgment:

- (A) Directing all of the defendants except Commonwealth to account for all monies unlawfully received by them as a result of the transactions hereinbefore described;
- (B) Holding all of the defendants other than Commonwealth jointly and severally liable for all damages which they have caused by virtue of the acts and transactions complained of;
- (C) Fixing damages and determining the damages sustained by Commonwealth by virtue of the acts and transactions complained of:
 - (D) Granting an injunction as prayed for in the complaint;
- (E) Granting the plaintiffs the costs and disbursements of this action, including reasonable counsel fees and accountants' fees;
- (F) Granting the plaintiffs such other and further relief as to the Court may deem just and proper.

/s/ J. Vernon Patrick, Jr.

J. VERNON PATRICK, JR.

Berkowitz, Lefkovits & Patrick 1400 City National Bank Building Birmingham, Alabama 35203 (Area 205/328-0480) General and Liaison Counsel for Commonwealth United Corp. Class Action Claimants and Counsel for Plaintiffs in Count I hereof

/s/ Stanley L. Kaufman

STANLEY L. KAUFMAN

Kaufman, Taylor, Kimmel & Miller 41 East 42nd Street New York, N. Y. 10017 (Area 212/682-2983) General Counsel for Commonwealth United Corp. Class Action Claimants and Counsel for Plaintiffs in Count I hereof /s/ Edward Nathan

EDWARD NATHAN

136 East 57th Street
New York, N. Y. 10022
(Area 212/752-5170)
General and Liaison Counsel for
Commonwealth United Corp. Derivative Action Claimants and Counsel
for Plaintiffs in Count II hereof

/s/ Arthur Abbey

ARTHUR ABBEY

Carrow, Bernson, Hoeniger, Freitag & Abbey 1 East 44th Street New York, N. Y. 10017 (Area 212/661-3330) General Counsel for Commonwealth United Corp. Derivative Action Claimants and Counsel for Plaintiffs in Count II hereof

VERIFICATION

STATE OF ALABAMA)
JEFFERSON COUNTY)

Before me this date appeared J. Vernon Patrick, Jr., known by me, who being by me first duly sworn, deposes and says as follows:

I am one of counsel for plaintiffs in this cause. The allegations of the foregoing Complaint are based upon investigation by me and my co-counsel and I am informed and verily believe that each of said allegations is true and correct.

/s/ J. Vernon Patrick, Jr.

J. Vernon Patrick, Jr.

Sworn to and subscribed before me, this the 5th day of September, 1970.

/s/ Cherrie Ingram
Notary Public

DEMAND FOR TRIAL BY JURY

Plaintiffs respectfully demand trial by jury of this action.

/s/	J. Vernon Patrick, Jr.
/s/	Stanley L. Kaufman
/s/	Edward Nathan
/s/	Arthur Abbey
	Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consolidated Second Amended Complaint was this date served upon all parties to this action by service by U. S. mails, properly addressed and postage prepaid, addressed to all counsel listed in Appendix A to this Court's First Pretrial Conference Order in Docket No. M-19-95, on this the 5th day of September, 1970.

/s/ J. Vernon Patrick, Jr.
One of Counsel for Plaintiffs

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95

IN RE: SEEBURG-COMMONWEALTH UNITED LITIGATION

CLASS ACTION ORDER NO. 1

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, it is hereby found, determined and ORDERED that:

- 1. Sherlee Land, Robert R. Jennings, et al. v. Commonwealth United Corp., et al., 69 Civ. 3726 ("the Land action") shall be maintained as a class action for the benefit of all persons other than defendants who at any time during the period commencing October 16, 1968 and ending August 1, 1969 acquired for value securities issued by Commonwealth United Corporation ("CUC"), including its common stock, its preferred stock, its debentures and its warrants, and who have sustained losses thereon as a result of wrongful acts and omissions of defendants herein.
- 2. The class on whose behalf the action was instituted are so numerous that joinder of all members is impractical.
- 3. There are questions of law and fact common to all members of the class on whose behalf this action was instituted.
- 4. These common issues predominate over any questions affecting only individual members of the class sued for.
- 5. A class action is superior to other available methods for the fair and efficient adjudication of the controversies raised by the pleadings.
- 6. Prosecution of separate actions by individual members of the class sued for would create a risk of inconsistent or varying adjudications with respect to individual members of the class sued for which would establish incompatible standards of conduct for the defendants.
- 7. No other action under Docket No. M-19-95 shall be maintained as a class action against the defendants in this case. The allegations of the complaints in said other actions by which the plaintiffs therein purport to sue representatively on behalf of others than themselves are hereby stricken therefrom and all pleadings in said other actions are hereby deemed amended accordingly.
 - 8. CUC shall give notice of the pendency of the Land action to all

members of said class by publication of notice in the form attached to this Order in the national editions of THE WALL STREET JOURNAL once a week for two successive weeks. In addition, on or before the date of the second such publication, CUC shall cause a copy of said notice to be mailed to those persons listed on the following records of CUC:

- a. List of common stock shareholders of Commonwealth United Corporation dated September 27, 1968, February 21, May 19, June 18, and November 17, 1969;
- b. List of holders of shares of Seeburg Corporation dated September 11, 1968;
- c. List of preferred shareholders of Commonwealth United Corporation dated November 17, 1969.
- 9. Any person within the above described class may cause himself to be excluded therefrom by filing a written request for exclusion with the Clerk of this Court on or before the 28th day after the second publication of such notice pursuant to paragraph 8 hereof.
- October 16, 1968 and ending August 1, 1969, acquired for value securities of CUC, and who does not duly file a request for exclusion on or before the date specified in paragraph 9 hereof is hereby enjoined after said date, except by order of the Court for good cause shown, from initiating or countinuing any action or proceeding against any of defendants in the Land-Jennings on any claim of loss on such securities sustained as a result of wrongful acts and omissions of defendants in the Land-Jennings action.

Done and ORDERED this 2nd day of February, 1972.

/s/ Frank H. McFadden

United States District Judge

Anited States District Court southern district of New York

SHERLEE LAND, et al.,

Plaintiffs

__ vs __

DOCKET No. M-19-95 69 Civ. 3726

COMMONWEALTH UNITED CORPORATION, et al., Defendants

IMPORTANT NOTICE TO PRESENT AND FORMER HOLDERS OF SECURITIES ISSUED BY COMMONWEALTH UNITED CORPORA-TION OF LITIGATION WHICH MAY AFFECT YOUR RIGHTS

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and pursuant to order of this Court, you are hereby notified as follows:

1. The civil action described above ("the Land action") is now pending in this Court as a class and derivative action. The class action count thereof seeks money damages for the benefit of a class consisting of all persons who at any time during the period commencing October 16, 1968 and ending August 1, 1969 acquired for value any securities issued by Commonwealth United Corporation ("CUC") and who have sustained losses thereon as a result of wrongful acts and omissions of defendants in said action. Such persons are herein designated "the class". The complaint alleges that the defendants caused CUC to enter into financial transactions which had no legitimate business purpose, to disseminate false information, to withhold material information and to dress up CUC's financial statements, all with the purpose and effect of influencing the market price of CUC securities and to the damage of class members who were misled to their detriment in acquiring CUC securities at artificially inflated prices. The defendants include CUC; many of its then directors and officers; its auditors, Arthur Young & Co.; its financial consultants, Kleiner-Bell & Co.; and various persons with whom it had financial dealings.

Plaintiffs' counsel have advised the Court that additional parties defendant may be added after further discovery. The Court does not contemplate further notice of the pendency of this action merely because additional defendants may be added.

Some plaintiffs in the same action have asserted a derivative claim for the benefit and use of Commonwealth United based on the alleged wrongdoings of the defendants other than CUC.

- 2. All the defendants who have thus far answered the complaint have denied liability. No court has as yet passed on the merits of any of the class claims. Trial by jury has been demanded and the trial date has tentatively been set for December 4, 1972. Settlement discussions have been undertaken, but no agreement has been reached to date.
- 3. This Court has ordered that the Land action is to be maintained as a class action for the benefit of the class as above described, and that this Notice is to be given to members of the class pursuant to Rule 23 of the Federal Rules of Civil Procedure.
- 4. The Court will exclude any person from the Land class action who on or prior to the 10th day of April, 1972, files with the Clerk, U. S. District Court, Southern District of New York, Foley Square,

New York, New York 10007, a written request for exclusion marked "Docket No. M-19-95" and signed by the person requesting exclusion. Each person requesting exclusion is requested to specify separately each transaction within the period October 16, 1968 through August 1, 1969 by which the signer acquired any CUC securities for value, including the date, number and type of securities acquired and the price paid. Persons who thus request exclusion will not be entitled to share in the benefits of any judgment or settlement in these actions favorable to the plaintiffs, and will not be bound by any judgment rendered in these actions (except as to derivative claims) if the judgment is adverse to the plaintiffs. Persons who are within the class and who do not duly file a request for exclusion will be bound by any judgment entered in the Land action, whether reached after trial or by settlement and whether or not favorable to plaintiffs.

- 5. General Counsel for the class appointed by the Court are Stanley L. Kaufman, Esquire, Kaufman, Taylor, Kimmel and Miller, 41 East 42nd Street, New York, New York 10017, and J. Vernon Patrick, Jr., Esquire, Berkowitz, Lefkovits & Patrick, 1400 City National Bank Building, Birmingham, Alabama 35203. Any person in the class who does not request exclusion may, if he desires, enter an appearance in the *Land* action through counsel of his own choosing. If such person does not request exclusion and does not enter an appearance through separate counsel, the plaintiffs and their counsel in the *Land* action will be deemed to represent his interests therein.
- 6. The Court files in the Land action are available for inspection during regular office hours at the office of the Clerk of the United States District Court for the Southern District of New York, Foley Square, New York, New York 10007.

DONE and ORDERED this 2nd day of February, 1972.

/s/ Frank H. McFadden United States District Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

STIPULATION OF SETTLEMENT

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION SHERLEE LAND, ROBERT R. JENNINGS, et al.,

Plaintiffs

- against -

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants

This Stipulation of Settlement is made by the Initiating Parties both for themselves and prospective New Parties (as defined in §§2.1 and 2.2) with respect to the above captioned case ("Land"), certain Individual Cases pending in the above captioned docket and certain Related Cases pending elsewhere (both as defined in §1.2) on terms and conditions herein set forth, subject to approval of the Court.

GENERAL

§1.1 On February 2, 1972, the Court ordered that Land be maintained as a class action against defendant Commonwealth United Corporation ("CUC") and others for the benefit of all persons other than defendants therein who at any time during the period commencing October 16, 1968 and ending August 1, 1969 acquired for value securities issued by CUC, including its common stock, its preferred stock, its debentures and its warrants, and who have sustained losses thereon as a result of wrongful acts and omissions of defendants therein. Said order directed the giving of notice to all members of said class and authorized any person within the class to cause himself to be excluded therefrom by filing a written request for exclusion by a specified date, which date has now passed. The aggregate of persons within the class as defined in said order, excluding those persons who duly caused themselves to be excluded and who remain excluded therefrom after the time for filing claims as provided in §5.3 of this Stipulation of Settlement, is hereinafter referred to as "the CUC

· Class." The complaint in Land in addition alleges in Count II claims derivately in behalf of CUC.

- §1.2 Either as pleaded or as a result of an order of the Court dated February 2, 1972, all other actions in Docket M-19-95 brought by persons suing as holders or former holders of CUC securities are individual actions whereby the plaintiffs therein seek damages or other relief with respect to one or more of the matters referred to in the *Land* complaint ("the Individual Cases"). In addition, some of the plaintiffs named in actions in Docket M-19-95 and some other holders of CUC securities represented by undersigned counsel have actions pending in other courts seeking damages or other relief from defendants named in actions in Docket M-19-95 with respect to transactions referred to in such actions ("the Related Cases").
- §1.3 In the United States District Court for the Western District of Arkansas, CUC is a defendant in two pending actions brought by and in behalf of certain persons who acquired securities issued by CUC during the period commencing October 16, 1968 and ending August 1, 1969, pursuant to an agreement between CUC and Berry Petroleum Company, and Arkansas corporation, dated as of August 20, 1968, which actions are entitled Berry Petroleum Co. v. CUC (ED 70-C-58) and O'Daniel v. CUC (ED 71-C-15) and are referred to herein as "the Berry Cases." Independent negotiations for settlement of the Berry Cases are expected to result in a stipulation of settlement therein, consistent with this Stipulation of Settlement.
- §1.4 Pursuant to a proxy statement dated February 7, 1972, CUC has held a meeting of its stockholders with respect to a "Plan of Settlement" set forth in said proxy statement, by which CUC proposes to settle a substantial portion of its outstanding obligations by primarily utilizing the consideration from the sale of the capital stock and certain indebtedness of its wholly-owned subsidiary The Seeburg Corporation of Delaware ("Seeburg") to Seeburg Industries Inc. ("Industries") pursuant to a "Purchase Agreement" dated as of January 1, 1972, a copy of which is set forth in said proxy statement. Said sale is to be closed on a "Closing Date" determined as provided in the Purchase Agreement, but only if on or before the Closing Date all conditions necessary to consummate the Plan of Settlement have been satisfied. Pursuant to vote of the CUC shareholders, the outstanding common shares of CUC will be reverse split one for ten

when the Plan of Settlement is consummated. The consummation of the Plan of Settlement by its terms is dependent upon various occurrences including the settlement of material litigation against CUC on terms similar to terms described in the Plan of Settlement, and judicial approval thereof to the extent required.

§1.5 The Parties (as defined in §2.3) have made this Stipulation of Settlement in order to effect settlement of Land as part of the consummation of the Plan of Settlement, concurrently with the contemplated stipulation of settlement of the Berry cases and on terms permitting the broadening of the proposed settlement to cover other defendants named in Docket M-19-95 as well as Individual Cases and Related Cases. If approved by the Court pursuant to application under §5.1, settlement hereunder shall be effected by appropriate instruments to be delivered on the "Closing Date" determined as provided in the Purchase Agreement. If at any time (even after judicial approval) the Plan of settlement is abandoned or consummation thereof is permanently precluded by non-appealable order of a court of competent jurisdiction, or if the Closing Date under the Purchase Agreement is extended beyond July 1, 1973, or if this Court disapproves or fails to approve this Stipulation of Settlement by July 1, 1973, this Stipulation of Settlement shall for all purposes be voidable on written notice by any of the undersigned counsel for Initiating Parties to the other Parties. If so voided, no right, claim, obligation, liability or defense of any person shall arise or be affected by this Stipulation's having been negotiated, and nothing herein contained or done hereunder will be deemed an admission or concession by any Party or will be used by anyone for any adversary purpose.

PARTIES

- §2.1 The "Initiating Parties" to this Stipulation of Settlement are CUC, the named plaintiffs in Land, the CUC Class and Industries as purchaser under the Purchase Agreement.
- §2.2 At any time on or before the Closing Date any person named as a plaintiff or defendant in any action in Docket M-19-95 or in any Related Case or any other interested person may file with the Court a "Stipulation of Concurrence" executed by him or his counsel and by counsel for the Initiating Parties. Thereupon, such person shall become a "New Party" to this Stipulation of Settlement on terms applicable to him

as set forth herein and in his Stipulation of Concurrence, and settlement shall be effective as to him upon approval of this Stipulation of Settlement by the Court, subject to voiding of his Stipulation of Concurrence as provided in §5.5. A Stipulation of Concurrence shall constitute an appearance of the New Party in any action in Docket M-19-95 as to which settlement of such action as to the New Party signing the Stipulation of Concurrence is closed hereunder and not otherwise.

§2.3 The term "Parties" refers to the Initiating Parties identifies in §2.1 and those persons who hereafter are New Parties under Stipulations of Concurrence.

THE SETTLEMENT FUND

- §3.1 To effect settlement hereunder, Parties shall make contributions to a "Settlement Fund" as follows:
 - (a) CUC shall make available for issuance shares of its common stock and of its preferred stock as provided in §3.2.
 - (b) Each other Party shall make such cash contribution to the Settlement Fund, if any, and shall give such other consideration, it any, as is specified with respect to settlement by him in §3.4.
 - (c) CUC shall make available such additional cash, if any, as may be necessary to make the total cash in the Settlement Fund at least \$750,000, and to the extent that CUC is required to make available cash for distribution to persons other than itself and fails to do so, Industries shall advance the required sum as a non-secured loan to CUC, payable five years from the Closing Date with interest payable quarterly at 6½% per annum, subject to approval of its institutional lenders.
- §3.2 CUC shall make available for issuance as part of the Settlement Fund an aggregate number of shares of its common stock plus an aggregate number of shares of its preferred stock ("the Settlement Shares") determined as of the Closing Date under the Purchase Agreement as follows:
 - (a) After giving effect to all prior and concurrent transactions affecting the number of issued and outstanding CUC shares, including the one for ten reverse split, there shall be determined the aggregate number of all issued and outstanding CUC common shares and the aggregate number of all issued and outstanding CUC preferred shares prior to issuance of any shares hereunder.
 - (b) If the aggregate Allowed Class Claims as determined under

- §5.3 is \$10,000,000 or more, then CUC shall make available for issuance under this §3.2 additional shares of its common and preferred stock equal to the number thereof issued and outstanding as so determined under §3.2(a).
- (c) If the aggregate Allowed Class Claims as determined under §5.3 is less than \$10,000,000 then CUC shall make available for issuance under this §3.2 whatever numbers of additional shares of its common stock and of its preferred stock equal the respective numbers thereof issued and outstanding as so determined under §3.2(a) multiplied by the ratio of Allowed Class Claims as determined under §5.3 to \$10,000,000.
- §3.3 The Settlement Fund shall be distributed as follows:
- (a) The Settlement Shares shall be distributed as provided in §§4.1 and 4.2.
- (b) All allowances by the Court for attorneys fees, accountants fees and disbursements to plaintiffs' counsel in cases in Docket M-19-95 predicated on services rendered for the benefit of CUC or shareholders of CUC or members of the CUC Class shall be paid out of the cash in the Settlement Fund, it being understood that the undersigned counsel for derivative plaintiffs intend to apply for an aggregate allowance of \$250,000 for such fees and disbursements with respect to services rendered for the benefit of CUC or of shareholders of CUC, and that the undersigned counsel for the CUC Class intend to apply for an aggregate allowance of \$500,000 for such fees and disbursements with respect to services rendered for the benefit of members of the CUC Class. CUC shall not otherwise be responsible for any fees or disbursements of counsel for any Party in litigation in Docket M-19-95 except for fees and disbursements of its undersigned litigation counsel.
 - (c) Any balance in the Settlement Fund including non-cash contributions shall be distributed to CUC.
- §3.4 Every Party agrees, effective upon consummation of the Plan of Settlement and upon closing under the Purchase Agreement, and as consideration for settlement of litigation as to him hereunder and release of claims against him with respect to matters referred to in the *Land* complaint:
 - (a) To waive and release any and all right of indemnity or contribution which he may have as against any other Party with respect to any expense or liability of any sort (including counsel fees) which he has incurred or may incur in the defense or settlement of Land,

the Individual Cases, the Related Cases, or in any other action heretofore or hereafter brought with respect to any of the matters complained of in any of said cases.

- (b) To discontinue with prejudice and release all claims made by him is *Land*, the Individual Cases and Related Cases against any other Party to this Stipulation of Settlement.
- (c) To give a general release to CUC and each of its subsidiaries, except to the extent, if any, expressly provided in the Stipulation of Concurrence executed by him.
- (d) To surrender for cancellation all contracts between him and CUC or any of its subsidiaries, except to the extent, if any, expressly provided in the Stipulation of Concurrence executed by him.
- (e) To contribute to the Settlement Fund cash and other property, it any, as specified in the Stipulation of Concurrence executed by him. As to each Party who contributes cash hereunder: Such cash shall be held in escrow by the undersigned attorneys for CUC, in interestbearing certificates of deposit or the equivalent until the entry as to him of a final judgment of dismissal pursuant to §5.1, and such judgment becoming unappealable. Upon fulfillment of that condition, such cash shall be released from escrow for distribution as provided in §3.3. Should it appear at any time, however, that such condition cannot be fulfilled, such cash shall then be released from escrow and refunded to the Party who contributed it. The interest earned thereon up to the date such judgment becomes unappealable or the date of refund, as the case may be, shall belong to, and if, when, and as collected shall be paid to, the contributing Party. The escrowee shall have no personal liability, and all expenses accrued in performance of the escrow shall be chargeable to the escrow fund.

THE SETTLEMENT SHARES

- §4.1 As of the Closing Date under the Purchase Agreement, Settlement Shares shall be distributed or reserved for distribution as follows:
 - (a) 54,365 common shares to persons who received shares of CUC pursuant to the agreement between CUC and Berry Petroleum Company, an Arkansas corporation, dated as of August 20, 1968, subject to settlement of the Berry Cases and judicial approval thereof.
 - (b) 30,488 common shares to Polaris Fund if it becomes a Party to this Stipulation of Settlement.
 - (c) 75,000 common shares to Jack B. Crawford and Don D. Crawford jointly if they become Parties to this Stipulation of Settlement.

(d) 10,000 shares to Robert Cassotto if he becomes a Party to this Stipulation of Settlement.

If Settlement Shares proposed to be distribudted under this §4.1 cannot be distributed as of the Closing Date for any reason, then CUC shall reserve such shares for application against any settlement or judgment against it in favor of persons identified in this §4.1.

- §4.2 Settlement Shares not distributed or reserved for distribution pursuant to §4.1 shall be distributed to members of the CUC Class for whom no provision is made for distribution under §4.1, and in proportion to their respective Allowed Class Claims, as determined under §5.3. The time and manner of distribution shall be as provided in §5.4.
- §4.3 Distribution pursuant to §4.1 may be made prior to the Closing Date under the Purchase Agreement if in settlement of all pending claims against Parties to this Stipulation of Settlement of the persons to whom distributed arising out of the matters referred to in the *Land* complaint. Distributions so made shall be deemed made as of the Closing Date under the Purchase Agreement and shall be adjusted for the reverse split for purposes of computation of number of CUC shares to be contributed to the Settlement Fund pursuant to §3.2 and numbers of shares distributable to members of the CUC Class pursuant to §4.2.
- §4.4 No person shall receive any distribution of Settlement Shares under this Stipulation of Settlement unless he shall first execute and deliver to CUC a sufficient release of each Party to this Stipulation of Settlement of any and all claims and rights of action arising out of or relating to his acquisition, retention or sale of any stock or other security of CUC or of any subsidiary thereof, provided that such release shall not release defendant Arthur Young & Co. if it does not become a Party hereto.

COURT APPROVAL

§5.1 As soon as possible after the execution of this Stipulation of Settlement by the Imitiating Parties, the undersigned counsel shall make application to the Court for approval under F.R.C.P. Rules 23 and 23.1 upon such published and mailed notice to members of the CUC Class and the shareholders of CUC as the Court may direct. If the settlement is approved and the Plan of Settlement is consummated, each Party shall be released of all claims against him by any other Party which are asserted or could be asserted in the Land complaint and final judgments shall be

entered dismissing Land and all other actions settled hereunder with prejudice and without costs as to all Parties to this Stipulation of Settlement, subject however to §§3.4(c), 3.4(d), 5.5, 6.1 and 6.2 hereof. Approval of the Court shall be sought conditioned upon consummation of the Plan of Settlement and this Stipulation shall remain subject to §1.5 even after approval by the Court.

- §5.2 Pending the making and final determination of the application for Court approval under §5.1 and pending any appeal from such determination, any Party to this Stipulation of Settlement who has recovered or hereafter recovers any judgment, or who has pleaded or hereafter pleads in any action any cause of action seeking judgment on any claims against any Party as to which he is required to give a release under this Stipulation of Settlement, shall cease all efforts to enforce such judgment and to prosecute such cause of action. If this Stipulation of Settlement is approved by the Court, each such Party shall execute and deliver, effective upon consummation of the Plan of Settlement, appropriate papers to discharge each such judgment and discontinue and release each such cause of action with prejudice and without costs.
 - §5.3 Upon the giving of notice to members of the CUC Class under §5.1, every person (other than those within §4.1 hereof) who is a member of the class defined in the Court's order of February 2, 1972, whether or not he then took steps to exclude himself from the class, shall be allowed to participate in distribution of the Settlement Shares under §4.2 provided that he then files with an agent designated by CUC on or before a specified deadline his completed "Statement of Claim" in the form annexed hereto. On the basis thereof, the Court will be asked to determine the amount, if any, to be allowed on each claim ("Allowed Class Claim"), and such amounts shall be the basis of distribution under §4.2. No Statement of Claim shall be considered unless actually received by CUC on or before the deadline specified in the notice, which deadline shall be ninety (90) days after completion of the publication and mailing of notices under §5.1. Within forty-five (45) days after said deadline, CUC shall file with the Court all Statements of Claims it has received together with a report listing each claim which appears allowable in a specified amount from the face of the Statement of Claim, and a separate report listing all claimants whose Statements of Claims do not clearly show allowable claims in specific amounts, and shall mail to all persons on the second list a "Notice of

Pending Rejection of Claim" in the form annexed hereto. Within ninety (90) days after the aforesaid deadline for the filing of Statements of Claim any interested person may file with the Court, with a copy to each of the undersigned counsel for the Initiating Parties, any objection to any claim and any evidence in support of any claim. Within one hundred twenty (120) days after the aforesaid deadline for the filing of Statements of Claim, the Initiating Parties shall file with the Court a report of their joint recommendations as to which claims should be found to be Allowed Class Claims and in what amounts, together with statements of their diverse positions with respect to such claims, if any, as to which they are not in agreement. The Parties hereby ask the Court then to determine by order the Allowed Class Claims, if any, of each person who shall have filed a Statement of Claim. The Parties agree that the Court may modify the procedures prescribed by this §5.3 without affecting the rights and obligations of the Parties under other sections of this Stipulation of Settlement, and that the time required for proceedings under this §5.3 shall not constitute a reason for delay in application for the entry of an order of the Court under §5.1 approving settlement hereunder, entry of final judgment dismissing the actions as to Parties hereto, closing under the Purchase Agreement and hereunder, or application for counsel fees.

§5.4 As promptly as practicable after the entry of an order of the Court determining Allowed Class Claims under §5.3, but not before the Closing Date under the Purchase Agreement, CUC shall make distribution of Settlement Shares as provided in §4.2. No certificates for fractional shares shall be issued. The aggregate of fractional shares which otherwise would be issuable under §4.2 shall be reallocated so as to round out larger fractional share allocations to the next higher whole number of shares, and smaller fractional share allocations which cannot so be rounded out shall then be ignored. The expenses of the notices and reports to be made by CUC under §5.3 and of allocation and distribution of Settlement Shares under this §5.4 shall be borne by CUC.

§5.5 This Stipulation of Settlement is severable as to a New Party who becomes such by execution and filing of a Stipulation of Concurrence. If the Court declines to approve the terms of settlement hereunder as to any New Party or New Parties, the Stipulation of Concurrence of such Party or Parties shall become void and no right, claim, obligation, liability or defense of any person shall arise or be affected by such Stipulation of

Concurrence's having been negotiated, and nothing contained therein or done thereunder will be deemed an admission or concession by any person or will be used by anyone for any adversary purpose, but nonetheless this Stipulation of Settlement shall remain in force as to all other Parties and settlement thereunder, if approved by the Court, shall proceed as if such unapproved New Party or New Parties had not executed a Stipulation of Concurrence.

FURTHER LITIGATION

§6.1 Insofar as the complaints in Land and the Individual Cases and Related Cases plead claims derivatively in behalf of CUC against persons who do not become Parties to this Stipulation of Settlement, said actions shall continue, and any of said claims may be prosecuted either derivatively or, at the option of CUC, may be prosecuted by CUC through counsel of its own choice as against any non-settling defendant other than Arthur Young & Co. CUC shall hold harmless and indemnify all other Parties to this Stipulation of Settlement against any and all claims and liabilities asserted against them which could not have been asserted if such claims were not prosecuted and against resulting costs, provided the indemnified Party defends such claims in good faith, but only to the extent that CUC thereby achieves a recovery from such non-settling defendant by way of settlement or judgment.

Related Cases plead claims in behalf of persons other than CUC against persons who do not become Parties to this Stipulation of Settlement, said actions shall be dismissed with prejudice and without costs, except as to defendant Arthur Young & Co. This action and any of said claims may be prosecuted against Arthur Young & Co. if it does not become a Party hereto provided that the CUC Class and any member of the CUC Class or other Party hereto who prosecutes such claims against Arthur Young & Co. shall hold harmless and indemnify all other Parties to this Stipulation of Settlement against any and all claims and liabilities asserted against them which could not have been asserted if such claims were not prosecuted and against resulting costs, provided the indemnified Party defends such claims in good faith, but only to the extent that the Party or Parties prosecuting such claims thereby achieve a recovery from Arthur Young & Co. by way of settlement or judgment.

Dated: New York, N.Y. May, 1972

CARROW, BERNSON,
HOENIGER, FREITAG & ABBEY

By

A Member of the Firm General Counsel for Sherlee Land, et al., plaintiffs in Land suing derivatively in behalf of Commonwealth United Corporation

> BERKOWITZ, LEFKOVITS & PATRICK

By

A Member of the Firm

KAUFMAN, TAYLOR, KIMMEL & MILLER

By

A Member of the Firm
General Counsel for Robert R. Jennings, et al., plaintiffs in Land suing in behalf of the Commonwealth United Corporation Class

TOWNLEY, UPDIKE, CARTER & RODGERS

By

A Member of the Firm Attorneys for Commonwealth United Corporation, defendant

GOLENBOCK and BARELL

By

A Member of the Firm
Attorneys for Seeburg Industries, Inc.

FORM OF STIPULATION OF CONCURRENCE

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION

SHERLEE LAND, ROBERT R. JENNINGS, et al.,

Plaintiffs

- against -

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants

STIPULATION OF CONCURRENCE

- 1. This Stipulation of Concurrence is made in conjunction with the "Stipulation of Settlement" in the above captioned matters, dated May , 1972, by and between the Initiating Parties, as defined in §2.1 of the Stipulation of Settlement, and , a party in Docket M-19-95 ("the New Party").
- 2. The New Party hereby agrees to become a Party to the Stipulation of Settlement on terms applicable to him as set forth in the Stipulation of Settlement and in this Stipulation of Concurrence.

[To be used if New Party is a Defendant]

 The New Party shall make the contributions required of him as a settling defendant under the Stipulation of Settlement, and [describe any other special contribution].

[To be used if New Party is a Plaintiff]

3. The New Party agrees to accept in full settlement of all litigation and claims to be settled or released under the Stipulation of Settlement the Settlement Shares allocable to him under §4.1 of the Stipulation of Settlement.

[Alternate]

3. The New Party agrees to accept in full settlement of all litigation and claims to be settled or released under the Stipulation of Settlement

the Settlement Shares and cash, if any, distributable to him pursuant to §4.2 of the Stipulation of Settlement.

Dated: New York, New York

...., 1972

By

Attorneys for the New Party

EDWARD NATHAN and CARROW, BERNSON, HOENIGER, FREITAG & ABBEY

By

General Counsel for Sherlee Land, et al., plaintiffs in Land suing derivatively in behalf of Commonwealth United Corporation

BERKOWITZ, LEFKOVITS & PATRICK and KAUFMAN, TAYLOR, KIMMEL & MILLER

By

General Counsel for Robert R. Jennings, et al., plaintiffs in *Land* suing in behalf of the Commonwealth United Corporation Class

TOWNLEY, UPDIKE, CARTER & RODGERS

By

Attorneys for Commonwealth United Corporation, defendant

GOLENBOCK and BARELL

By

Attorneys for Seeburg Industries, Inc.

FORM OF STATEMENT OF CLAIM

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION

SHERLEE LAND, ROBERT R. JENNINGS, et al.,

Plaintiffs

- against -

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants

STATEMENT OF CLAIM

Pursuant to an order of the Court made herein and a Stipulation of Settlement dated May , 1972, this Statement of Claim may be filed by any person, other than a defendant in the above captioned matters, who at any time during the period commencing October 16, 1968 and ending August 1, 1969 acquired for value securities issued by Commonwealth United Corporation ("CUC"), a Delaware corporation, that is its common stock, its preferred stock, its debentures or its warrants, and either retained such securities on August 1, 1969 or sold them at a loss before that date, and who has not released claims for loss arising out of such acquisition or been barred from prosecution of action thereon.

The purpose of this Statement of Claim is to enable the Court to determine what claimants shall participate in a prospective distribution pursuant to a settlement in the above captioned matters, from which distributions are proposed to be made pursuant to said Stipulation of Settlement and under the aforesaid order of the Court on the basis of losses without interest properly shown from Statements of Claim on this form. Each claimant should supply adequate information to identify himself and to describe each separate acquisition of CUC securities he made for value between October 16, 1968 and August 1, 1969, and to show the amount of realized or unrealized loss thereon on August 1, 1969.

Type or print all information called for on this form, sign the form, have it notarized, and mail or otherwise cause the completed form to be

delivered to promptly.
WARNING: Unless this Statement of Claim is duly completed, signed,
notarized and actually received by
on or before ,
1972, your claim may not be allowed by the Court.
Name of Claimant: Mailing Address: (include Zip Code) Telephone: (include Area Code)
INSTRUCTIONS
Use one line for each transaction by which you acquired for value a security of CUC between October 16, 1968 and August 1, 1969, on which you had a realized or unrealized loss as of August 1, 1969. Omit any transaction on which you made a profit. Keep cash transactions separate from transactions other than for cash, and as to the latter, supply details showing the nature and value of the consideration you gave or received. Where a security acquired between October 16, 1968 and August 1, 1969 was still held on August 1, 1969, your claim is for the unrealized loss on that date being the difference between your acquisition cost and the August 1, 1969 value, computed at the following stipulated values of CUC securities as of that date:
Common stock, per share — \$
\$1.05 convertible preferred stock, per share — \$
Stock purchase warrants, per warrant — \$
6% subordinated debentures due 7/1/83, per \$1,000 face amount — \$
5% subordinated debentures due 12/31/88, per \$1,000 face amount — \$
5% subordinated debentures due / /77, per \$1,000 face amount — \$
9½% subordinated debentures due / /86, per \$1,000 face amount — \$

Where a security was acquired in exchange for another security, the cost of the original security should be used, except that shares of the Seeburg Corporation exchanged for CUC preferred and warrants under the

Part 1. Cash transactions Where CUC Security Sold Before 8/1/69

Date	Type	Quantity	Total	Date	Net	Amount
of	of	of	Price	of	Price	of Loss
Purchase	Security	Security	Paid	Sale	Received	Realized

Part 2. Cash Transactions Where CUC Security Held on 8/1/69

Date	Type	Quantity	Total	Value	Unrealized
of	of	of	Price	on	Loss on
Purchase	Security	Security	Paid	8/1/69	8/1/69

Part 3. Exchange of Seeburg Shares for CUC Preferred and Warrants under Exchange Offer of 10/16/68

- (a) Number of Seeburg shares exchanged
 (b) Value of said shares at \$ per share \$ \$
- (c) Proceeds of sales of CUC preferred and warrants received for Seeburg shares where sold before 8/1/69:

Type of	Quantity	Date of	Price
Security	Sold	Sale	Received

(e) Value at 8/1/69 of CUC preferred and warrants received for Seeburg shares and still retained at said date:

shares of preferred at

per share
warrants at \$

per warrant
\$

8/1/69 value of holdings \$.....

Part 4. Other Transactions Not Wholly for Cash

State separately as to each transaction the date of acquisition within the period October 16, 1968 through August 1, 1969, and the date of disposition if within said period, or the fact of continued holding on August 1, 1969,

and all facts showing value given and received and dollar amount of realized or unrealized loss as of August 1, 1969, using values of retained securities at August 1, 1969 as stated above.

Total of amounts in Parts 1, 2, 3 and 4 (use in following statement)

\$

STATEMENT

I (we) do hereby release Commonwealth United Corporation, each of its subsidiaries, and each person who is a Party to the Stipulation of Settlement in the above captioned matters dated May , 1972, as defined therein, for any and all claims and rights of action arising out of or relating to my (our) acquisition, retention or sale of any stock or other security of Commonwealth United Corporation or any subsidiary thereof.

[Omit if Arthur Young & Co. becomes a Party]

I (we) agree and acknowledge that in the event that I (we) prosecute any claim pleaded in any complaint in the above captioned matters against defendant Arthur Young & Co., or if such claim is prosecuted in our behalf, I (we) will hold harmless and indemnify Commonwealth United Corporation, its subsidiaries and each of the Parties to said Stipulation of Settlement against any and all claims and liabilities asserted against them which could not have been asserted if such claims were not prosecuted, and against resulting costs, but only to the extent that I (we) thereby achieve a recovery by way of settlement or judgment from Arthur Young & Co.

CLAIMANT

CLAIMANT (All persons in whose names the stock, debenture or stock option is issued should sign)

STATE OF) 50	SS.
COUNTY OF) 5	٠.

Notary Public in and for
State of
County of

FORM OF NOTICE OF PENDING REJECTION OF CLAIM

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

In re: NOTICE OF PENDING REJECTION OF CLAIM
SEEBURG-COMMONWEALTH UNITED LITIGATION
SHERLEE LAND, ROBERT R. JENNINGS, et al.,

Plaintiffs

- against -

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants

ro:	
10:	Claimant
above captioned	TAKE NOTICE that your Statement of Claim filed in the matters does not appear from its face to show a claim specific amount, and that a report of said fact has been urt.
PLEASE 7	TAKE FURTHER NOTICE that if, on or before, 1972, you file with the Court, with a copy to each
claim, a further	for parties specified below, any evidence in support of your r report with the recommendations of said counsel will be
	Court, and that thereafter the Court will be asked to deter- our claim is allowable, and in what amount, if any.

PLEASE TAKE FURTHER NOTICE that if you fail to file evidence in support of your claim before said date, or if your evidence fails to show that you have an allowable claim in a specific amount, the Court may disallow your claim in whole or in part.

Dated: New York, New York, 1972.

COMMONWEALTH UNITED CORPORATION 767 Fifth Avenue New York, New York 10022

TOWNLEY, UPDIKE, CARTER & RODGERS 220 East 42nd Street New York, New York 10017

EDWARD NATHAN, ESQ. 136 East 57th Street New York, New York 10022

BERKOWITZ, LEFKOVITS & PATRICK 1400 City National Bank Building Birmingham, Alabama 35203

GOLENBOCK & BARELL 60 East 42nd Street New York, New York 10017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

FINAL ORDER AND JUDGMENT

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION

SHERLEE LAND, ROBERT R. JENNINGS, HARRY J. MYERS, CARL KALASH, OLGA KALASH, SIDNEY ABBEY, MARY ABBEY, SHIRLEY GOLDMAN, MARTIN DE STEFANO, NANCY SPITALNIK, IRVING BAUM, SIMON ALTABET, STANLEY A. CHASE, SALVATORE DE FRESCO, KATHRYN FOX, THOMAS FOX, NORMAN GLASSEROW, JULIUS GLAZER, TAMARA GLAZER, MARCIA E. HERMAN, GEORGE HOROWITZ, JOHN HOROWITZ, HARRY JACOBS, HAROLD LANZNER, LOUIS MELTZER, JAMES ROSENFELD, SAUL E. SAPPER, CHARLES SCHNEIDER, BERNARD SEGAL, LOUIS SEGAL, LOUIS SINGER, MAX I. STAUB, JOHN SUB, GEORGE WALTHER, MARY JANE WEISS, CARL WEISS, BESSIE YABLON, CHARLES NEMAROW, JERRY FUSS, ERNEST J. GLOVER, HANNS BEYER, ALINE BEYER, BENJAMIN B. LEINOFF, LEINOFF PROFIT SHARING TRUST, JOSEPH GROSS, CHRISTIAN TEUCHTLER, BERTHA H. MEYERS and PHIL MEYERS, Plaintiffs,

- against -

COMMONWEALTH UNITED CORPORATION,
A. BRUCE ROZET, OLIVER A. UNGER, IRVING
GOLDSTEIN, SIDNEY KIBRICK, RICHARD A.
SARAZEN, RODNEY W. LOEB, ARNE KALM,
H. IGOR ANSOFF, GOTTFRIED von MEYERN
HOHENBERG, HOWARD D. MARTIN, PETER
GETTINGER, KLEINER, BELL & CO., KLEINER,
BELL & CO., INC., LOUIS J. NICASTRO,
BURT KLEINER, LIONEL BELL, RALPH SHAPIRO,
RICHARD A. FRELING, THEODORE R. SAYERS,
PETER HUANG, BENJAMIN F. BRESLAUER, I.O.S., LTD,
(S.A.), ARTHUR YOUNG & COMPANY and

Defendants.

On August 17, 1972 this Court made an order, among other things, setting a hearing on October 24, 1972 for the purpose of finally deter-

mining whether the proposed settlements as provided in the Stipulation of Settlement herein and related Stipulations of Concurrence, in conjunction with the Plan of Settlement in the prospectus of Seeburg Industries Inc. dated June 30, 1972, are proper, fair, reasonable, just, equitable and adequate and should be finally approved by the Court, and, in the event such settlements be finally approved by the Court and consummated, whether the claims asserted herein against the settling defendants should be dismissed with prejudice and without costs and an appropriate judgment entered in accordance with the Stipulation of Settlement. The same order prescribed the notice of such hearing to be given to class members and stockholders of defendant Commonwealth United Corporation ("CUC"). The notice of the hearing thereby directed was duly given as shown by proofs thereof filed with the Court. At the hearing on October 24, 1972 it appeared that no one had served or filed any written objections to the settlements except for Jesse I. Krauss, The Landau Family Foundation, Bernard C. Segal (also acting on behalf of Louise Segal Block and Louis Singer), and Norman H. Zevitz.

After hearing all objectants requesting leave to be heard and taking proof at such hearing, the Court adjourned the hearing to November 28, 1972. By further adjournment the hearing was continued on November 29, 30, and December 1, 1972, at which time the Court took further proof and heard the attorneys for plaintiffs and settling defendants as to the fairness, reasonableness and adequacy of the proposed settlements.

By Final Order and Judgment entered and filed November 29, 1972, the Court approved the Plan of Settlement as modified thereby, the Stipulation of Settlement and the Stipulations of Concurrence of the Kleiner Bell group of defendants, Louis J. Nicastro and Sidney Kibrick, severed and continued Count I of the Consolidated Second Amended Complaint (class claims) as against defendant Arthur Young & Company, severed and continued Count II thereof (derivative claims) as against CUC (as nominal beneficiary defendant), A. Bruce Rozet, Oliver A. Unger, Irving Goldstein, Richard A. Sarazen, Rodney W. Loeb, Arne Kalm, H. Igor Ansoff, Gottfried von Meyern-Hohenberg, Howard D. Martin, Peter Gettinger, Theodore R. Sayers, Peter Huang, Benjamin F. Breslauer, and I.O.S. Ltd. (S.A.), and dismissed this action and all actions consolidated therewith as against Kleiner, Bell & Co., Kleiner, Bell & Co., Inc., Burt Kleiner, Lionel Bell,

Ralph J. Shapiro, Martin S. Shapiro, Richard A. Freling, 140 Associates, Louis J. Nicastro, Sidney Kibrick and CUC.

WHEREFORE, IT IS FINALLY ORDERED, ADJUDGED AND DECREED as follows:

- 1. The separate Stipulations of Concurrence of A. Bruce Rozet, Oliver A. Unger, Irving Goldstein, Richard A. Sarazen, Rodney W. Loeb, Arne Kalm, H. Igor Ansoff, Gottfried von Meyern Hohenberg, Peter Gettinger, Peter Huang, and I.O.S. Ltd. S. A., defendants, and of Exeter International Corp., George N. Friedlander, Investors Overseas Bank Limited, Roger K. Soderberg, Morton I. Schiowitz, and Robert F. Sutner, parties defendant in Docket M-19-95, and of I olaris Fund, Inc., Jack B. Crawford, Don D. Crawford and Lillian M. Crawford, parties plaintiff in said docket are finally approved as proper, fair, reasonable, just, equitable and adequate, and any and all objections thereto are hereby overruled.
- 2. Count I of the Consolidated Second Amended Complaint (class claims) is severed from this action and continued as against defendant Arthur Young & Company only. Count II of the Consolidated Second Amended Complaint (derivative claims) is severed and continued as against CUC (as nominal beneficiary defendant), Theodore R. Sayers, Benjamin F. Breslauer, and Howard D. Martin.
- 3. This action and all actions consolidated therewith are dismissed as against defendants A. Bruce Rozet, Oliver A. Unger, Irving Goldstein, Richard A. Sarazen, Rodney W. Loeb, Arne Kalm, H. Igor Ansoff, Gott-fried von Meyern-Hohenberg, Peter Gettinger, Peter Huang and I.O.S., Ltd. (S.A.) with prejudice and without costs.
- 4. The affidavit of mailing and the proof of publication of the notice as previously directed by the Court have been duly filed and the form, content and method of notice are held to be sufficient and adequate notice as required by Rules 23 and 23.1, Federal Rules of Court Procedure.
- 5. The settling parties named in the preceding paragraphs are directed to perform the Plan of Settlement as modified, the Stipulation of Settlement and the Stipulations of Concurrence, insofar as applicable to them, according to their terms.
- 6. The undersigned retains jurisdiction for all purposes necessary or appropriate for implementation and enforcement of the Plan of Settlement

as modified, the Stipulation of Settlement and Stipulations of Concurrence, including (without limiting the generality of this reservation) all matters therein explicitly committed to the Court's jurisdiction for all purposes necessary or appropriate for administration of the settlement for the benefit of class members and for passing upon applications for allowances for legal and accounting services rendered in prosecuting and settling the consolidated actions and for expenses incurred in connection therewith. Any interested party may apply at the foot of this judgment, upon due notice to all other interested parties, for relief under this paragraph.

7. The Court hereby determines that there is no just reason for delay in the entry of this final judgment and accordingly directs that this final judgment be entered as, and be deemed a final judgment in accordance with Rule 54 (b) of the Federal Rules of Civil Procedure.

The clerk is directed to enter the foregoing as a final judgment forthwith.

/s/ Frank H. McFadden
U. S. D. J.

Dated: December 15, 1972.

Judgement Entered 12/18/72

/s/ John Livingston

Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. M-19-95 69 Civ. 3726

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION

SHERLEE LAND, ROBERT R. JENNINGS, et al.,

Plaintiffs,

- against -

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants.

STIPULATION OF SETTLEMENT WITH ARTHUR YOUNG & COMPANY

This Stipulation of Settlement is entered into by and between the undersigned parties on the conditions and terms set forth herein and is subject to the approval of the Court, following notice and hearing.

DEFINITIONS

As used herein, the following terms shall have the following meanings:

"Land" shall mean the above-captioned civil action, 69 Civ. 3726, and shall include the cases filed in this District Court heretofore consolidated therewith by order of Judge Cannella and the Jennings case heretofore consolidated therewith by order of Judge McFadden.

"State case" shall mean that certain civil action entitled Sherlee Land, et al. v. Commonwealth United Corporation, et al. Index No. 13257/1969, now pending in the Supreme Court of the State of New York.

"New Berry action" shall mean that certain civil action entitled Berry Petroleum Company v. Adams & Peck, et al., Civil Action No. CA-3-6579, heretofore filed in the United States District Court for the Northern District of Texas, Dallas Division.

"Iota" shall mean Iota Industries, Inc., a Delaware corporation, formerly known as Commonwealth United Corporation ("CUC").

"Arthur Young & Company" shall mean Arthur Young & Company, a partnership of independent certified public accountants.

"Stipulation" shall mean this Stipulation of Settlement with Arthur Young & Company, including the exhibits annexed thereto.

"May Stipulation" shall mean the Stipulation of Settlement dated May 26, 1972, filed in Land.

"Statements of Claim" shall mean statements of claim duly filed on the form approved by the Court's order of August 17, 1972.

"Allowed Claims" shall mean claims on Statements of Claim as ultimately approved by the Court.

"Cash Fund" shall mean the net fund created hereunder to be held for distribution on Allowed Claims.

"Share Fund" shall mean the fund of shares of Iota stock held for distribution on Allowed Claims pursuant to the May Stipulation.

"CUC Transfer Co." shall mean the corporation designated in the Court's order herein of August 17, 1972 to receive Statements of Claim thereunder.

"CUC class" shall mean and include all persons other than defendants in Land who, at any time during the period commencing October 16, 1968 and ending August 1, 1969, acquired for value securities issued by Iota, including its common stock, its preferred stock, its debentures and its warrants, and who have sustained losses on their acquisition of such securities, excluding, however, those persons who duly caused themselves to be excluded in accordance with this Court's February 2, 1972 Order in Land and who remain excluded therefrom on the effective date of this settlement.

"CUC class claims" shall mean and include all claims which have been asserted by plaintiffs in *Land* for the use and benefit of the CUC class, as well as all claims which could have been asserted on behalf of members of the CUC class, based upon the facts alleged in any of the *Land* complaints.

"CUC derivative claims" shall mean and include all claims which have been or could have been asserted by the plaintiffs in *Land* and in the State case, derivatively, for the use and benefit of Iota, based upon the facts alleged in any of the complaints in *Land*.

The words "this settlement" shall mean the settlement of the CUC class claims and the CUC derivative claims against Arthur Young & Company proposed hereby.

The words "effective date of this settlement" shall mean that date

by paragraph 8 of this Stipulation and following the entry by the Supreme Court of New York of a final judgment in the State case in the form prescribed by paragraph 9 of this or otherwise, said final judgments significant in the form prescribed by paragraph 9 of this or otherwise, said final judgments significant in the form prescribed by paragraph 9 of this or otherwise, said final judgments significant in the form prescribed by the Supreme Court of New York of a final judgment in the form prescribed by the Supreme Court of New York of a final judgment in the form prescribed by paragraph 8 of this Stipulation and following the entry by the Supreme Court of New York of a final judgment in the form prescribed by paragraph 8 of this Stipulation and following the entry by the Supreme Court of New York of a final judgment in the form prescribed by paragraph 9 of this or otherwise, said final judgments significant in the State case in the form of the state case in the form of the supreme of the supreme of the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of a final judgment in the State case in the form the supreme Court of New York of All State case in the State case in the supreme Court of New York of All State case in the State case in the State c

The words "finally effective" when used to describe this settlement shall mean this settlement after the effective date of this settlement.

The words "escrow agent" shall mean a commercial bank nominated by CUC Transfer Co. and acceptable to Arthur Young & Company, upon notice to the undersigned and approved by this Court.

"December 23 note" shall mean that certain note executed on behalf of Commonwealth United Corporation by Robert F. Dziurgot as its Vice President, in the principal amount of \$203,906.79, dated December 23, 1970, payable on November 30, 1971, to the order of Arthur Young & Company, with interest at the rate of 63/4 % per annum, and shall include any and all obligations of Iota with respect to said note and the obligations evidenced thereby, including (but not limited to) any obligations arising by virtue of that certain letter signed by Mr. Dziurgot on behalf of Commonwealth United Corporation dated December 23, 1970, addressed to Arthur Young & Company.

All other terms defined in the May Stipulation shall have the same meanings in this Stipulation, unless otherwise required by the context.

90

RECITALS

Arthur Young & Company enters into this Stipulation in order to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation without in any way acknowledge fault or liability. Arthur Young & Company has denied and continues to deny all charges of wrongdoing or liability whatsoever made in 69 Civ. 3726 or in the State case with respect to any and all matters asserted in any and all of the complaints filed in any action pending in this Court and in the State case.

Plaintiffs in Land have asserted both CUC class claims and CUC derivative claims. Moreover, in the State case, certain of the plaintiffs in Land have also asserted CUC derivative claims. Settlements have heretofore been effected of the CUC class claims with respect to all defendants except Arthur Young & Company, pursuant to the May Stipulation, heretofore

finally approved by this Court and closed on December 28, 1972.

Pursuant to this Court's order dated January 16, 1973 in Land, Arthur Young & Company has filed cross-claims and third-party complaints in Land against various persons.

§6.1 and §6.2 of the May Stipulation permitted plaintiffs in Land to continue to prosecute the CUC class claims and the CUC derivative claims against Arthur Young & Company, but by the terms of §6.1 and §6.2 therein it was agreed by the parties thereto that certain of the parties to the May Stipulation were to be indemnified against any and all claims and liabilities which could not have been asserted if the CUC class claims and the CUC derivative claims were not prosecuted against Arthur Young & Company, and against resulting costs, but only to the extent that CUC or the CUC class achieved a recovery from Arthur Young & Company by way of settlement or judgment.

Prior to the execution of this Stipulation, counsel for each defendant beneficiary of such agreement has advised General Counsel for the CUC class that such defendant will not assert any claim for indemnity, counsel fees, or costs against Iota or against any plaintiff in Land or any CUC class member or from any recovery achieved from Arthur Young & Company by virtue of this Stipulation, provided the cross-claims filed in Land by Arthur Young & Company against the defendants so indemnified are dismissed in accordance with the tenor of paragraph 4 of this Stipulation.

The sum of \$11,726.00 has previously been paid to Arthur Young & Company which it has credited on the December 23 note, but a controversy has arisen between Iota and Arthur Young & Company with respect to whether Iota has any obligation to Arthur Young & Company under the December 23 note.

lota enters this Stipulation to facilitate completion of the Plan of Settlement referred to in the May Stipulation. Pursuant thereto, the Share Fund is presently being held for distribution as may be ordered by the Court on the basis of Statements of Claim filed with CUC Transfer Co. under the order of August 17, 1972. Iota is now moving for amendments in the procedures established by the Court for distribution of said shares, and none of the parties to this Stipulation objects to the relief requested by said motion.

lota is in the process of preparing to mail to its shareholders its annual

report for the year ended December 31, 1972, together with a proxy statement for a meeting of Iota shareholders. It has offered to include in said mailing a notice of hearing on its aforesaid motion and on this Stipulation, such notice to be substantially in the form annexed to this Stipulation, to cause said notice to be published once in the national edition of THE WALL STREET JOURNAL, and to cause such notice of hearing to be mailed with a copy of its 1972 annual report to all persons who shall have filed Statements of Claim with CUC Transfer Co. on or before the record date for the Iota shareholders meeting, and further to cause CUC Transfer Co. to effect distribution of the Cash Fund on Allowed Claims concurrently with distribution of the Share Fund, as proposed by its said motion and subject to further order of the Court, all in consideration of a payment of \$50,000 and interest thereon as provided in this Stipulation. The parties to this Stipulation believe that economies in the administration of this settlement can be achieved by co-ordinating this settlement with administration of the settlement of the CUC class claims under the May Stipulation as now proposed by Iota's said motion. If the claims of the CUC class against Arthur Young & Company were administered entirely separately from the earlier settlement under the May Stipulation, the parties hereto estimate that the administrative expenses of separate claims and notice procedures would be approximately \$50,000, or more.

The management of Iota, the undersigned General Counsel for the CUC class plaintiffs, and the undersigned General Counsel for the derivative plaintiffs are of the opinion that termination of the Land and State case litigation, on the terms and conditions herein set forth, is in the best interests of Iota and should enhance the value of shares of Iota to be distributed to members of the CUC class pursuant to the May Stipulation heretofore approved by this Court.

AGREEMENT

For the purpose of terminating this time-consuming, burdensome and expensive litigation on the terms and conditions herein set forth, and without admission on the part of any of the undersigned parties, and subject to approval of this Court following notice and hearing, the undersigned stipulate and agree as follows:

1. This Stipulation and the proceedings taken thereunder shall in no event be construed as or deemed to be evidence of, or an admission of or

concession of, any liability or wrongdoing whatsoever on the part of Arthur Young & Company or Iota, which is hereby expressly denied and disclaimed. Neither this Stipulation nor its provisions nor any of the proceedings looking to Court approval of this Stipulation shall be offered or received in evidence in any action or proceeding in any court, arbitration proceeding, or administrative tribunal as an admission or concession of liability or of wrongdoing of any nature.

- 2. In compromise and settlement of the CUC class claims, Arthur Young & Company will pay the total sum of \$950,000.00 which shall be administered, paid and disbursed as follows:
- A. Within ten (10) business days following the entry of judgment by the United States District Court for the Southern District of New York as prescribed by paragraph 8 herein, Arthur Young & Company will pay over to the escrow agent \$950,060.00 by certified or official bank check or checks payable in New York Clearing House funds. Said sum (and any income thereon) shall be invested by the escrow agent as promptly as practicable in short term (four months maturities or less) obligations issued or guaranteed by the United States Government, or in certificates of deposit issued by a commercial bank having an office in New York City and approved by this Court (which bank may be the escrow agent), or in such other investments as may be at any time and from time to time approved by this Court. The escrow agent shall maintain, administer, invest, and reinvest said fund (and any income thereon) until ordered by the Court to disburse the same. The escrow agent shall be entitled from time to time to pay itself, out of said monies, its reasonable fees and disbursements (but it shall give each of the undersigned at least ten (10) days prior notice of its intention to do so and, in the event any question is raised with respect to any such fee or disbursement, the dispute shall be submitted to and resolved by the District Court). Said fund (and any income thereon) shall forthwith be returned to Arthur Young & Company in the event the settlement is disapproved or for any reason does not become finally effective, but the escrow agent shall be entitled first to deduct therefrom its reasonable fees and disbursements (which shall be subject to approval by the Court in the event any question with respect thereto is raised by Arthur Young & Company).
 - B. As promptly as is practicable after the effective date of settlement,

all monies held by the escrew agent shall be disbursed upon order of this Court as follows:

- (1) There shall be paid therefrom the reasonable fees and disbursements of the escrow agent (in such amount as may be approved by the Court in the event any question with respect to the escrow agent's request therefor is raised by any of the undersigned parties to this Stipulation) for services rendered and to be rendered by the escrow agent hereunder.
- (2) There shall be paid therefrom such award (if any) as the Court may make legal and accounting services rendered in prosecuting and settling the CUC class claims in Land against Arthur Young & Company and achieving a settlement with Arthur Young & Company for the benefit of the CUC class, and such award as the Court may make as reimbursement for out-of-pocket expenses incurred in connection with prosecuting and settling the CUC class claims against Arthur Young & Company.
- (3) The escrow agent shall next pay therefrom any Court costs (including any special master's fee) or other items which the escrow agent is ordered by the Court to pay from the fund then held by the escrow agent.
- (4) The sum of \$50,000 plus the accrued interest thereon shall be paid to Iota in consideration of its arrangements with respect to notice of hearing and distribution of the Cash Fund.
- and shall be distributed on Allowed Claims by individual checks or drafts drawn by CUC Transfer Co. upon the escrow funds payable to the order of the members of the CUC class as determined by the Court. Each such draft or check shall be payable only in the event the draft or check is endorsed by the payee at the foot of a release (which shall be printed on the draft or check) of Arthur Young & Company in the form annexed as Exhibit A to this Stipulation (the form of which release is hereby agreed to by Arthur Young & Company). Said checks or drafts shall by their terms provide that they are payable only if presented for payment within six months from date thereof, and a sum equal to the aggregate of such checks or drafts (if any) as are not duly presented for payment in proper form shall be forthwith paid by the escrow agent to Iota.
- (6) The undersigned parties agree that the District Court may modify the distribution procedures prescribed by this Stipulation with-

out affecting the substantive rights and obligations of the undersigned parties under this Stipulation.

3. On the closing date for the settlement of the CUC derivative claims, which shall be such date as may be agreed upon by Iota and Arthur Young & Company, or, in the absence of such agreement, on the tenth business day following the effective date of this settlement, or on such other date after the tenth business day following the effective date as may be ordered by the Court, Arthur Young & Company and Iota shall simultaneously perform the following covenants in consummation of the compromise and settlement of the CUC derivative claims and the December 23 note:

A. Arthur Young & Company shall surrender to Iota the December 23 note, and said note shall be marked "Satisfied" by a partner duly authorized by Arthur Young & Company to satisfy said note;

B. Iota shall pay to Arthur Young & Company by certified or official bank check or checks, payable in New York Clearing House funds, the sum of Sixty-Nine Thousand Two Hundred Eighteen Dollars (\$69,218.00) plus an additional sum equal to interest at one per cent (1%) per annum on \$192,180.00 (i.e., the unpaid principal balance which Arthur Young & Company claims is due as of the date of this Stipulation) from December 23, 1970 to said closing date;

C. Iota shall deliver to Arthur Young & Company a release and covenant not to sue Arthur Young & Company, in the form annexed as Exhibit "B" hereto, duly executed by an officer of Iota duly authorized to execute the same;

D. Arthur Young & Company shall deliver to Iota a release of Iota, in the form annexed as Exhibit "C" hereto, duly executed by a partner of Arthur Young & Company duly authorized to execute the same.

4. Conditioned upon this settlement becoming finally effective, Arthur Young & Company covenants that it will not, except by way of setoff or counterclaim, assert any claim for contribution or for indemnity with respect to its costs in defending and settling this suit, and further by this Stipulation, upon the same condition and subject to this Stipulation becoming finally effective, it moves to dismiss, without prejudice, its cross-claims and third-party complaints in Land against each of the defendants and third-party defendants named in its cross-claims and third-party complaints in Land.

The purposes and intention of this paragraph 4 is to provide a

mechanism for termination of Arthur Young & Company's participation in this burdensome and time-consuming litigation without prejudice to the rights and claims of Arthur Young & Company, and without prejudice to the rights and claims of the third-party defendants and the defendants against whom Arthur Young & Company has heretofore filed third-party complaints and cross-claims. Arthur Young & Company reserves, however, any and all rights, claims, defenses, third-party complaints and cross-claims which it may have against any persons whomsoever (other than Iota, to the extent of the release to be given hereunder in accordance with Exhibit "C" hereto) including the parties and third-party defendants in Land, in the New Berry action, and in other sum now pending or hereinafter brought, and whether involving the subject matter of Land or not.

- 5. The undersigned parties hereby agree to submit this Stipulation to the District Court promptly after the execution hereof, and agree to request and make it a condition to the effectiveness of this Stipulation that the Court order notice substantially in the form annexed hereto be given by Iota's causing said notice to be mailed with a copy of its 1972 annual report to its shareholders of record on the record date for the next meeting of its shareholders and also to all persons who on or before said date have filed Statements of Claim or received distribution under the May Stipulation, and to be published once in the national edition of THE WALL STREET JOURNAL.
 - 6. The undersigned parties hereby agree to recommend to the Court:
- A. That the Court allow any member of the CUC class (who has not heretofore filed a valid Statement of Claim) sixty (60) days following the anticipated date of published notice hereof within which to file a Statement of Claim; and
- B. That claims which are received at any time prior to expiration of said sixty-day period be submitted to the Court, and that such as are allowed by the Court be permitted to participate in amounts determined by the Court to be equitable in any distribution made to CUC class members in *Land*, whether under this Stipulation or under the May Stipulation.
- 7. In the event that the Court approves this Stipulation and the escrow agent pays Iota the \$50,000 plus interest thereon as provided in paragraph 2.B(4), Iota will cause CUC Transfer Co. to process Statements of Claim to determine the proportionate entitlement of each claimant to

participate in distribution of the Cash Fund pursuant to order of the Court, and draw and mail checks drawn on the Cash Fund together with certificates for shares of lota stock out of the Share Fund.

- 8. In the event the District Court approves this settlement after notice to the CUC class and after notice to stockholders of Iota and after hearing at which each member of the CUC class and each stockholder of Iota shall have been given an opportunity to be heard, then the District Court shall enter a final judgment in Land in accordance with Rule 54(b) of the Federal Rules of Civil Procedure dismissing with prejudice all CUC class claims and all CUC derivative claims asserted by the plaintiffs against Arthur Young & Company in Land (or which could have been asserted by the CUC class or by CUC or Iota against Arthur Young & Company based upon the facts alleged in any of the complaints in Land), including claims for court costs and including all claims asserted by the plaintiffs for themselves individually or for the CUC class or asserted, derivatively, for the use and benefit of Iota or CUC.
- 9. Promptly after the final judgment in Land described in paragraph 8 hereof shall have become final and not subject to further review, the parties hereto will take all reasonable and necessary steps to obtain a final judgment in the State case, dismissing, with prejudice and without costs, all claims asserted by the plaintiffs in the State case against Arthur Young & Company.
- 10. In the event that this Stipulation is not approved by this Court, or does not become finally effective, this Stipulation shall become null and void and of no further force and effect; and this Stipulation and all negotiations and proceedings relating thereto shall be without prejudice as to the rights of any and all parties hereto, who shall be restored to their respective status quo existing at the date of this Stipulation.
- 11. General Counsel for the CUC derivative (Count II) plaintiffs shall not make application in the State case for any award of attorney fees, accounting fees, expenses, or costs in the State case, but shall apply to the District Court therefor, and such award (if any) as is made by the Court to General Counsel for the CUC derivative (Count II) plaintiffs for legal and accounting services (and expenses) in prosecuting and settling the CUC derivative claims against Arthur Young & Company shall be payable by Iota as the Court may direct.

- 12. Such award (if any) as is made by the Court to General Counsel for the CUC class for legal and accounting services rendered in prosecuting and settling the CUC class against Arthur Young & Company, and for out-of-pocket expenses incurred in connection therewith, shall be payable solely from the fund recovered hereunder from Arthur Young & Company, and shall not be payable from §3.3(b) of the May Stipulation.
- 13. General Counsel for the CUC derivative action plaintiffs intend to apply to the Court for an award of \$100,000 as reasonable compensation for legal and accounting services, and for out-of-pocket expenses in connection with prosecuting and settling the CUC derivative claims against Arthur Young & Company.

Iota acknowledges that the making of this application is not a breach of the provisions of the May Stipulation with respect to the applications, but Iota shall be free to take such position with respect to aggregate fee applications of such general counsel as it may be advised.

- 14. General Counsel for the CUC class intend to apply to the Court for an award of \$225,000.00 as reasonable compensation for legal and accounting services and their out-of-pocket expenses in prosecuting and settling the CUC class claims against Arthur Young & Company.
- 15. The cash fund created by §3.3(b) of the May Stipulation shall not be used to pay any allowance made to General Counsel for the CUC class for services rendered in prosecuting and settling the CUC class claims against Arthur Young & Company, it being understood and agreed that any award made by the Court to General Counsel for the CUC class with respect to the litigation of the CUC class against Arthur Young & Company and the settlement thereof shall be payable solely from the fund paid to the escrow agent by Arthur Young & Company hereunder.

Dated: New York, New York August 7, 1973

EDWARD NATHAN

CARROW, BERNSON, FREITAG & ABBEY

By

A Member of the Firm General Counsel for Sherlee Land,

General Counsel for Sherlee Land, et al., plaintiffs in Land and counsel

for plaintiffs in the State case, suing derivatively in behalf of Commonwealth United Corporation (now Iota)

BERKOWITZ, LEFKOVITS & PATRICK

By

A Member of the Firm

KAUFMAN, TAYLOR KIMMEL & MILLER

By

A Member of the Firm General Counsel for Robert R. Jennings, et al., CUC Class Plaintiffs in Land

TOWNLEY, UPDIKE, CARTER & RODGERS

By

A Member of the Firm Attorneys for Commonwealth United Corporation (now Iota), a defendant

WHITE & CASE

By

A Member of the Frank Attorneys for Arthur Young & Company, a defendant

A-188

EXHIBIT A

The undersigned does for himself, his heirs, assigns and any legal representative, release Arthur Young & Company, its partners and employees, from any and all claims which have been made or could have been made with respect to any purchases or acquisition of Commonwealth United Corporation securities, and from any and all claims which were or could have been made in the case entitled Sherlee Land, et al. v. Commonwealth United Corporation, et al., 69 Civ. 3726, U.S.D.Ct.S.D.N.Y.

EXHIBIT B

KNOW ALL MEN BY THESE PRESENTS that Iota Industries, Inc., in consideration of the sum of Five Dollars (\$5.00) to it in hand paid by Arthur Young & Company, the receipt of which is hereby acknowledged, does hereby covenant and agree with Arthur Young & Company its successors and assigns, that Iota Industries, Inc. will never institute any suit or action at law or otherwise against Arthur Young & Company, nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action or cause of action for damages which it ever had, now has or may have against Arthur Young & Company, its successors and assigns, arising out of any matter alleged in the Second Consolidated Amended Complaint in the action entitled Sherlee Land, Robert R. Jennings, et al. v. Commonwealth United Corporation, et al., Index No. 69 Civ. 3726, or arising out of any matter otherwise asserted in said action now pending in the United States District Court for the Southern District of New York, and

lota Industries, Inc. expressly agrees and covenants not to prosecute any suite or claim against Arthur Young & Company by reason of any payments made or consideration given or expenses incurred in settlement of the aforesaid action of Sherlee Land, et al. v. Commonwealth United Corporation, or by reason of any payments made or consideration given or expenses incurred heretofore in any other action or proceeding consolidated under the caption In re Seeburg-Commonwealth United Litigation, Docket No. MDL-19-95.

Lota Industries, Inc. further covenants and agrees with Arthur Young & Company that it will never institute any suit or action at law against Arthur Young & Company, nor institute prosecute or in any way aid in the prosecution of any claim, demand action or cause of action for damages, indemnity or contribution, nor to institute any claim or third-party complaint, against Arthur Young & Company upon any and all payments made or consideration given or expenses incurred in defending and settling the suit entitled Berry Petroleum Company et al., v. Commonwealth United Corporation, Civil Action No. EO 70-6-58, commenced in the United States District Court for the District of Arkansas.

It is further expressly understood and agreed that Iota Industries, Inc. expressly reserves its rights to proceed against sue or institute action against any person including Arthur Young & Company arising out of any matter

Land action or otherwise asserted in that action; to proceed against, sue or institute action against any person other than Arthur Young & Company with respect to any matter whatsoever; and except as expressly agreed in the preceding paragraphs relating to the proceedings of Sherlee Land v. Commonwealth United Corporation, and Berry Petroleum Co. v. Commonwealth United Corporation, and the Seeburg-Commonwealth United Litigation which have been settled, to institute or prosecute cross-claims or third-party complaints for indemnity and contribution against any and all persons, including Arthur Young & Company, in any other action commenced by any third person against Iota Industries, Inc.

IOTA INDUSTRIES, INC.

Ву			

A-191

EXHIBIT C

KNOW ALL MEN BY THESE PRESENTS that Arthur Young & Company of 277 Park Avenue, New York, New York in consideration of the sum of [\$69,218.00 plus interest] to it in hand paid by Iota Industries, Inc., (formerly known as Commonwealth United Corporation) the receipt of which is hereby acknowledged, does for itself, its partners and employees, release and forever discharge Iota Industries, Inc., and its subsidiaries or affiliates, their successors and assigns from any and all manner of claims, demands, damages, causes of action or suits that it may now have, have ever had or that might subsequently accrue to it, by reason of non-payment for services rendered by Arthur Young & Company to Iota Industries, Inc. or its subsidiaries or affiliates prior to December 23, 1970, and does hereby acknowledge that the undertaking of Commonwealth United Corporation reflected in its letter to Arthur Young & Company of December 23, 1970 (annexed hereto as Exhibit A), and the note of Commonwealth United Corporation in the amount of \$203,906.79 dated December 23, 1970 payable to Arthur Young & Company (annexed hereto as Exhibit B) have been cancelled, and that no liability or claim whatsoever shall ever be made against Iota Industries, Inc. by Arthur Young & Company, or its assigns, with respect thereto.

Arthur Young & Company does hereby covenant and agree with Iota Industries, Inc. and its successors and assigns, that Arthur Young & Company will never institute any suit or action at law or otherwise against Iota Industries, Inc., nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action or cause of action for damages which it ever had, now has or may have against Iota Industries, Inc., its successors and assigns, arising out of any matter alleged in the Second Consolidated Amended Complaint in the action entitled Sherlee Land, Robert R. Jennings, et al. v. Commonwealth United Corporation, et al., Index No. 69 Civ. 3726, or arising out of any matter otherwise asserted in said action now pending in the United States District Court for the Southern District of New York, and

Arthur Young & Company expressly agrees and covenants to dismiss and not further prosecute any cross-claims or third-party complaints served or filed by it in the above captioned case of Sherlee Land, et al. v. Commonwealth United Corporation, and further agrees to a voluntary dismissal and discontinuance in said action of all cross-claims and third-party

complaints heretofore filed by it, and agrees not to reinstate said third-party complaint or prosecute any other suit or claim against the said defendants and third-party defendants by reason of any payments made or expenses incurred by Arthur Young & Company in defense of or settlement of the aforesaid action of Sherlee Land, et al. v. Commonwealth United Corporation.

Arthur Young & Company further covenants and agrees with Iota Industries, Inc. that it will never institute any suit or action at law against Iota Industries, Inc. nor institute, prosecute or in any way aid in the prosecution of any claim, demand, action or cause of action for damages, indemnity or contribution, nor institute any claim or third-party complaint, against Iota Industries, Inc. upon any and all claims made in the suit entitled Berry Petroleum Company, et al. v. Adams & Peck, et al., Civil Action No. 3-6579-C, now pending in the United States District Court for the Northern District of Texas.

It is is hereby expressly understood and agreed that this instrument is not intended as a release or discharge of any other person whatsoever except as hereinabove expressed, and Arthur Young & Company reserves its rights to make any and all claims against any person other than Iota Industries, Inc. in the aforementioned case of Berry Petroleum Company, et al. v. Adams & Peck, et al.

It is further expressly understood and agreed that except as limited by tne preceding raragraphs, Arthur Young & Company expressly reserves its rights to proceed against, sue or institute action against any person including Iota Industries, Inc. arising out of any matter whatsoever; and except as above expressly limited to the actions of Sherlee Land v. Commonwealth United Corporation and Berry Petroleum Co. v. Adams & Peck, to institute or prosecute cross-claims or third-party complaints for indemnity and contribution against any and all persons, including Iota Industries Inc. in any action commenced by any third person against Arthur Young & Company.

ARTHUR YOUNG & COMPANY

Ву	
Partner	

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION

SHERLEE LAND, ROBERT R. JENNINGS, et al.,

Plaintiffs

- against -

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants.

FINAL JUDGMENT

The above-entitled action having come before the Court for hearing on November 13, 1973, the Honorable Frank H. McFadden, United States District Judge, presiding, pursuant to an Order of the Court dated August 10, 1973, to determine whether the compromise and settlement proided for in the Stipulation of Settlement with Arthur Young & Company, filed August 16, 1973, ("Settlement Stipulation") is proper, fair, reasonble, just, equitable and adequate and should be approved, and whether judgment should be entered thereon; and

Notice of the compromise and settlement and of the hearing having been given to the members of the class in the above-entitled consolidated action, and to the stockholders of Iota Industries, Inc. (formerly Commonwealth United Corporation), as directed by Order of the Court dated August 10, 1973, and proof of mailing and publication of the said Notice having been filed with the Court; and

All person present at the hearing having been given an opportunity to be heard; and respective attorneys for the plaintiffs and defendants having been heard in support of the compromise and settlement; and Leonard Darvin, pro se, appearing and having been heard in opposition to the compromise and settlement and certain other class members and stockholders having appeared and having been heard; and

The Court having fully considered all papers submitted to the Court in connection with the compromise and settlement, and all matters raised at the hearing, and the Settlement Stipulation and other papers and documents related thereto, and all pleadings and proceedings heretofore and herein, and after due deliberation;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 1. The parties have fully complied with Rules 23(e) and 23.1 of the Federal Rules of Civil Procedure, and due and adequate notice of the compromise and settlement and the hearing thereon has been given; and full opportunity to be heard at the hearing was afforded to the parties, to the members of the class, to the stockholders of Iota Industries, Inc., and to all other persons interest.
- 2. The Settlement Stipulation is hereby approved and the terms thereof are hereby adjudged to be proper, fair, reasonable, just, equitable and adequate.
- 3. All objections to the compromise and settlement provided for in the Settlement Stipulation are hereby overruled and denied in all respects.
- 4. Count I of the Second Consolidated Amended Complaint ("Complaint") is hereby dismissed, without costs to any party, on the merits and with prejudice as against the plaintiffs, and as against all members of the class consisting of all persons who at any time during the period commencing October 16, 1968 and ending August 1, 1969, acquired for value any securities issued by Commonwealth United Corporation and who have sustained losses thereon, except those persons who have heretofore effectively elected to exclude themselves from the class and who have not heretofore effective revoked such election of exclusion; and defendant Arthur Young & Company is hereby discharged from each and every claim alleged or which might have been asserted based upon the facts alleged in said Complaint.
- 5. All members of the class, except those who have effectively excluded themselves, are hereby severally barred and permanently enjoined from prosecuting against Arthur Young & Company any class or individual claims which are asserted or might have been asserted in the Complaint, arising out of or in any way relating to the matters or transactions set forth in the Complaint.
- 6. Count II of the Second Consolidated Amended Complaint ("Complaint"), brought as a derivative action, is hereby dismissed, without costs to any party, on the merits and with prejudice as against the plaintiffs and

plaintiffs-intervenors therein, Iota Industries, Inc., formerly Commonwealth United Corporation, and all stockholders of Iota Industries, Inc.; and defendant Arthur Young & Company is hereby discharged from each and every claim alleged or which might have been asserted based upon the facts alleged is said Complaint.

- 7. The settling parties named in the preceding paragraphs are directed to perform the Settlement Stipulation according to its terms.
- 8. Jurisdiction is hereby reserved by the Court over the consummation of the compromise and settlement provided for in the Settlement Stipulation, including proceedings with respect to the allowance of proofs of claims and distribution to claimants, and for the purposes of determining administration expenses and passing upon applications by plaintiffs, or their attorneys, for the allowance of their litigation expenses, including reasonable attorneys' fees.
- 9. The Court hereby determines that there is no just reason for delay in the entry of this final judgment and accordingly directs that this final judgment be entered as, and be deemed a final judgment in accordance with Rule 54(b) of the Federal Rules of Civil Procedure.

The clerk is directed to enter the foregoing as a final judgment forthwith.

/s/ Frank H. McFadden
U. S. D. J.

Dated: December 4, 1973 New York, New York

/s/ Raymond F. Burghardt
Clerk

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS EL DORADO DIVISION

Ex 2

Civil Action No. ED 71-C-15

J. E. O'DANIEL, YVONNE LAW and GERLAND R. PATTEN & CO., INC.,

Plaintiff

VS.

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation,

Defendants

Civil Action No. ED 70-C-58
BERRY PETROLEUM COMPANY,
an Arkansas Corporation,

Plaintiff

VS.

COMMONWEALTH UNITED CORPORATION, a Delaware corporation, and BERRY PETROLEUM COMPANY, a Delaware corporation,

Defendants

PETITION FOR DETERMINATION OF CLASS ACTION

Plaintiffs, J. E. O'Daniel, Yvonne Law and Gerland R. Patten & Co., Inc., for their petition state:

- 1. Each of the plaintiffs was the owner of shares of the common capital stock of Berry Petroleum Company, an Arkansas Corporation (herein "Berry") prior to its dissolution on October 31, 1968 and each of the plaintiffs acquired common stock of Commonwealth United Corporation (herein "Commonwealth") pursuant to the Plan and Agreement of Reorganization (herein the "Reorganization Agreement") entered into as of August 20, 1968 by Commonwealth and Berry, a copy of the Reorganization Agreement being attached as Exhibit A to the Complaint.
- 2. The plaintiffs in their Complaint seek to represent as a class all persons their heirs, successors and assigns who acquired the common stock of Commonwealth pursuant to the terms of the Reorganization Agreement.

- 3. The plaintiffs have asserted a cause of action individually and on behalf of the proposed class based on alledged violations of State and Federal Security laws in the negotiation, execution and consummation of the Reorganization Agreement and for breach of the terms of the Reorganization Agreement. With respect to the cause of action alledged in the Complaint:
 - (a) The class proposed to be represented by the plaintiffs consists of over 500 persons and the members of the class are so numerous that a joiner of all members of the class is impractical;
 - (b) There are questions of law and of fact raised by the pleadings which are common to all members of the class;
 - (c) The claims or defenses of the plaintiffs are typical of the claims or defenses of the class;
 - (d) The plaintiffs have employed the firms of Keith, Clegg and Eckert of Magnolia, Arkansas and Lester and Shults of Little Rock, Arkansas to represent their interest and the interest of the class and the plaintiffs acting through their attorneys will fairly and adequately protect the interest of the class.
- 4. Pursuant to Article V of the Reorganization Agreement the First National Bank of Magnolia, Arkansas acted as escrow agent and delivered to members of the class Certificates of Contingent Interest issued by Commonwealth reflecting the pro rata additional shares of Commonwealth common stock which each member of the class would be entitled to receive under the terms of the Reorganization Agreement. The First National Bank of Magnolia, Arkansas has a record of the names and addresses of each member of the class and based on the Certificate of Contingent Interest issued to each member of the class a record of the pro rata amount of any recovery which would be distributed to members of the class.

Wherefore, plaintiffs pray that the court pursuant to Rule 23 enter an order determining that this action may be maintained as a class action for all persons their heirs, successors and assigns who received the common capital stock of Commonwealth United Corporation pursuant to the terms of the Reorganization Agreement and that the court approve the form of the notice of determination of class action status that should be given

A-198

to each member of the class, said notice to be sent by the plaintiffs through the Trust Department of the First National Bank of Magnolia, Arkansas.

KEITH, CLEGG AND ECKERT Post Office Drawer A Magnolia, Arkansas

and

Lester and Shults 1330 Tower Building Little Rock, Arkansas 72201

/By/ Edward Lester
Attorneys for plaintiffs

A-199

CERTIFICATE OF SERVICE

Edward Lester one of the attorneys for the plaintiffs hereby certifies that on the 26 day of July, 1972 he mailed a copy of the foregoing pleading to the following attorneys of record for the defendants:

Mr. George E. Pike, Jr. Smith, Williams, Friday and Bowen Attorneys at Law 1100 Boyle Building Little Rock, Arkansas 72201

Mr. J. Gaston Williamson Attorney at Law 720 West Third Street Little Rock, Arkansas 72201

Messrs. Butler, Binion, Rice, Cook and Knapp Attorneys at Law Esperson Building Houston, Texas 77002

/s/ Edward Lester
Edward Lester

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS EL DORADO DIVISION

Civil Action No. ED 71-C-15

J. E. O'DANIEL, YVONNE LAW and
GERLAND R. PATTEN & CO., INC.,

Plaintiffs

VS.

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation,

Defendants

Civil Action No. ED 70-C-58
BERRY PETROLEUM COMPANY,
an Arkansas Corporation,

Plaintiff

VS.

COMMONWEALTH UNITED CORPORATION, a Delaware corporation, and BERRY PETROLEUM COMPANY, a Delaware corporation,

Defendants

MOTION

Plaintiffs for their motion state:

- 1. The parties by their respective counsel have filed a proposed Stipulation of Settlement.
- 2. Attached to this Motion and made a part hereof is a proposed form of a notice to be sent to each member of the class at the address of such member as shown on the records of the First National Bank of Magnolia, Arkansas as of the date the distribution of Commonwealth United Corporation common stock was made to pursuant to terms of the Plan Agreement of Reorganization.
- 3. Counsel for the plaintiffs have filed a petition for the allowance of attorney's fees in accordance wit' a written agreement entered into by Berry Petroleum Company, an Arkansas Corporation, acting by the Executive Committee of its Board of Directors and dated June 1, 1970.

WHEREFORE, plaintiffs pray for an order approving the form of the notice to be sent to members of the class and directing that such notice be sent through the offices of the Trust Department of the First National Bank of Magnolia, Arkansas and fixing a time and date for a hearing on the approval of the Stipulation of Settlement and for the consideration of the Petition for the allowance of attorney's fees to the counsel for the plaintiffs.

> Keith, Clegg and Eckert Drawer A Magnolia, Arkansas

and

Lester and Shults
1330 Tower Building
Little Rock, Arkansas
By Edward Lester

Attorneys for plaintiffs

CERTIFICATE OF SERVICE

Edward Lester one of the attorneys for the plaintiffs hereby certifies that on the 26 day of July, 1972, he mailed a copy of the foregoing pleading to the following attorneys of record for the defendants:

Mr. George E. Pike, Jr. Smith, Williams, Friday and Bowen Atorneys at Law 1100 Boyle Building Little Rock, Arkansas 72201

Mr. J. Gaston Williamson Attorney at Law 720 West Third Street Little Rock, Arkansas 72201

Messrs. Butler, Binion, Rice, Cook and Knapp Attorney at Law Esperson Building Houston, Texas 77002

/s/ Edward Lester

Attorneys for plaintiffs

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS EL DORADO DIVISION

Civil Action No. ED 71-C-15

J. E. O'DANIEL, YVONNE LAW and GERLAND R. PATTEN & CO., INC.,

Plaintiffs

V

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation,

Defendants

IMPORTANT NOTICE OF LITIGATION WHICH MAY AFFECT YOUR RIGHTS, TO ALL PERSONS AND THEIR HEIRS, SUCCESSORS OR ASSIGNS WHO ACQUIRED COMMON CAPITAL STOCK OF COMMONWEALTH UNITED CORPORATION PURSUANT TO THE TERMS OF THE PLAN AND AGREEMENT OF REORGANIZATION EXECUTED BY BERRY PETROLEUM COMPANY, AN ARKANSAS CORPORATION AND COMMONWEALTH UNITED CORPORATION

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and pursuant to an Order of this Court, you are hereby notified as follows:

1. The civil action described above is now pending in this Court as a class action on behalf of all persons who acquired stock in Commonwealth United Corporation pursuant to the terms of the Plan and Agreement of Reorganization whereby Commonwealth United Corporation acquired the assets of Berry Petroleum Company, an Arkansas Corporation in exchange for common capital stock of Commonwealth United Corporation with this stock being distributed on pro rata basis to the former stockholders of Berry Petroleum Company, an Arkansas Corporation. In the class action, the Plaintiffs seek a recision of the contract whereby the assets of Berry Petroleum Company, an Arkansas Corporation were transferred to Commonwealth United Corporation and in the alternative for money damages against Commonwealth United Corporation and Berry Petroleum Company,

- a Delaware Corporation, a company that subsquently acquired the Berry assets from Commonwealth United Corporation. The Complaint alleges that the defendants violated the Federal and State Securities Laws in that they made untrue statements of material facts or omitted statements of material facts necessary in order to make the statements made, in light of the circumstances not misleading, in connection with the negotiations leading up to the execution of the Plan and Agreement of Reorganization.
- 2. A separate suit has been filed in this court by Berry Petroleum Company, a dissolved Arkansas Corporation, against the same defendants. This suit contains substantially the same allegations as the suit by the individuals and has been consolidated with the class action case.
- 3. All the defendants have answered the complaints and have denied liability.
- 4. This Court has entered an Order declaring this case to be a class action on behalf of all persons who acquired the common capital stock of Commonwealth United Corporation pursuant to the terms of the Plan and Agreement of Reorganization executed August 20, 1970 by Commonwealth United Corporation and Berry Petroleum Company, an Arkansas Corporation. The Court will exclude any person from the class action who on cr prior to 10:00 a.m. on the 22 day of August, 1972, files with the Office of the Deputy Clerk, United States District Court, Western District of Arkansas, Federal Building, El Dorado, Arkansas, a written request for exclusion marked Berry Petroleum Company vs. Commonwealth United Corporation et al, ED-71-C-15 and signed by the person requesting exclusion Persons who thus request exclusion will not be entitled to share the benefits of any judgment or settlement in these actions favorable to the plaintiffs, and will not be bound by any judgment rendered in these actions if the judgment is adverse to the plaintiffs. Persons who are within the class and who do not file a request for exclusion will be bound by any judgment entered in the action wnether reached after trial or by settlement and whether or not favorable to the plaintiffs.
- 5. General counsel for the class has been designated as Oliver M. Clegg of the firm of Keith, Clegg and Eckert of Magnolia, Arkansas and Edward Lester of the firm of Lester and Shults, Tower Building, Little Rock, Arkansas. Any person in the class who does not request exclusion may, if

he desires, enter an appearance in the action through counsel of his own choosing. If such person does not request exclusion and does not enter an appearance through separate counsel, the plaintiffs and their counsel in the action will be deemed to represent his interest therein.

- 6. The Court files in the action are available for inspection during regular office hours at the office of the Clerk of the United States District Court in the Federal Building in El Dorado, Arkansas.
- 7. Counsel for the respective parties in both cases have filed with the court a proposed Stipulation of Settlement which in general provides:
 - (a) All claims against Commonwealth United Corporation and Berry Petroleum Company, a Delaware Corporation, pending in this Court or in companion suits filed in the Chancery Court of Quachita County, Arkansas, will be dismissed with prejudice and the defendants will be released from all liability to members of
 - (b) Commonwealth United Corporation will make available for issuance 543,650 shares of its common stock or if issuance is effected after the authorized one for ten reverse split, 54,365 shares of its new stock plus its note (with certain personal guarantees) for \$75,000.00.
 - (c) Berry Petroleum Company, a Delaware Corporation, will pay \$250,000.00 in cash.
 - (d) The net proceeds of the Settlement Fund after allowance for attorney's fees as authorized by the court and the expenses of the distribution of the Settlement Fund will be paid to the former shareholders of Berry Petroleum Company pro rata on the basis of the Certificates of Contingent Interest issued to such shareholders on the date the reorganization was consummated.

It is estimated that for each share of Berry Petroleum Company common stock owned at the time of the consummation of the reorganization agreement a person will receive approximately forty cents (\$.40) in cash plus two thirds of a share of the original common stock of commonwealth United Corporation or one tenth this number of shares if the one for ten reverse split has been consummated at the time of distribution.

8. The attorneys for the plaintiff have presented to the Court a petition for the allowance of an attorney's fee equal to one third of the cash and stock received in settlement. This payment will include all expenses incurred

by the attorneys in prosecuting the cases pending in this Court and in the Chancery Court of Ouachita County, Arkansas. The claim for these attorney's fees is based on a written agreement entered into by the Executive Committee of the Board of Directors of Berry Petroleum Company on June 1, 1970.

9. A hearing will be held before the Court at 10:00 a.m. on the 23 day of August, 1972, at the court room in the Federal Building in El Dorado, Arkansas. The purpose of this hearing is for the Court of consider the approval of the Stipulation of Settlement and the petition for the allowance of attorney's fees to the attorneys for the plaintiffs. Any member of the class will have the privilege of appearing and being heard on these matters.

Done and Ordered this 26 day of July, 1972.

Oren Harris
Oren Harris
United States District Judge

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS EL DORADO DIVISION

Civil Action No. ED 71-C-15 J. O. ODANIEL, YVONNE LAW and GERLAND R. PATTEN & CO., INC.,

Plaintiffs

VS.

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation,

Defendants

Civil Action No. ED 70-C-58
BERRY PETROLEUM COMPANY,
an Arkansas Corporation,

Plaintiff

vs.

COMMONWEALTH UNITED CORPORATION, a Delaware corporation, and BERRY PETROLEUM COMPANY, a Delaware corporation,

Defendants

JOINT MOTION FOR APPROVAL OF STIPULATION OF SETTLEMENT

The parties by their respective attorneys for their joint motion state:

- 1. Counsel for the parties have entered into an agreement for the settlement of all claims asserted by the plaintiffs in their Complaints. The terms of this proposed settlement are set out in the attached Stipulation of Settlement.
- 2. The cause I action asserted by the plaintiffs involves disputed questions of both law a d fact and, considering the inherent risk of litigation, the terms of the attached Stipulation of Settlement are fair and reasonable and it will be for the best interest of the members of the class to forego a trial and accept the benefits of an amicable settlement on the basis of the terms of the attached Stipulation of Settlement.
- 3. The proposed Stipulation of Settlement provides that Commonwealth United Corporation will make available for issuance 543,650 shares

of its common stock or if issuance is effected after the one for ten reverse split 54,365 shares of its common stock. These securities will be issued in exchange for the surrender of bona fide claims asserted by the plaintiffs and the petitioners pray that the Court after a hearing upon the fairness of the terms and conditions of the issuance of such shares, at which hearing all persons to whom it is proposed to issue the securities in such exchange shall have the right to appear, approve the issuance of the shares to members of the class.

WHEREFORE, the parties by their respective counsel move the Court for an Order setting a time and date for a hearing on the approval of the attached Stipulation of Settlement and upon the fairness of the terms and conditions under which the shares of the common stock of Commonwealth United Corporation will be issued to the members of the class and that the Court enter an Order directing the notice of such hearing that shall be given to each member of the class and that after such hearing that the Court enter an Order approving the attached Stipulation of Settlement and terminating this litigation pursuant to the terms of said Stipulation of Settlement.

Attorneys for the plaintiff Keith, Clegg and Eckert Drawer A Magnolia, Arkansas and

Lester and Shults 1330 Tower Building Little Rock, Arkansas /By/ Edward Lester

Attorneys for Defendant, Commonwealth United Corporation Smith, William, Friday and Bowen 1100 Boyle Building Little Rock, Arkansas 72201 /By/ George E. Pike, Jr.

Attorneys for Berry Petroleum Company, a Delaware Corporation Rose, Baron, Nash, Williamson, Carroll & Clay 720 West Third Street Little Rock, Arkansas 72201 /By/ J. Gaston Williamson

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS EL DORADO DIVISION

Civil Action No. ED 71-C-15 J. E. O'DANIEL, YVONNE LAW and GERLAND R. PATTEN & CO., INC.,

Plaintiffs

VS.

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation,

Defendants

Civil Action No. ED 70-C-58
BERRY PETROLEUM COMPANY,
an Arkansas Corporation,

Plaintiff

VS.

COMMONWEALTH UNITED CORPORATION, a Delaware corporation, and BERRY PETROLEUM COMPANY, a Delaware corporation,

Defendants

STIPULATION OF SE'. LEMENT

This Stipulation of Settlement is made by the Parties (as defined in §2.3) with respect to the above captioned cases and certain Related cases pending elsewhere (as defined in §1.2) on terms and conditions herein set forth, subject to approval of the Court.

GENERAL

§1.1 In the O'Daniel action, above captioned, plaintiffs sue on their own behalf and on behalf of past and present holders of the common stock of defendant Commonwealth United Corporation ("CUC") who received such stock by reason of the dissolution of Berry Petroleum Company, an Arkansas corporation ("Berry-Arkansas"), which is the plaintiff in the Berry action, above captioned. Both these actions arise out of a certain "Plan and Agreement of Reorganization," dated as of August 20, 1968, between Berry-Arkansas and CUC ("the Berry Agreement"), which was closed on or about

October 31, 1968, and they are herein referred to jointly as "the Berry Cases."

- §1.2 In the Chancery Court of Ouachita County, Arkansas, First Division ("the Arkansas Court"), Berry-Arkansas is the plaintiff in a pending action, No. 11,704, against CUC and the other defendant herein, Berry Petroleum Company, a Delaware corporation ("Berry-Delaware"). In the same Arkansas Court, a further action is pending against CUC and Berry-Delaware, No. 11,428, brought by Charlie S. Wilkins and others as trustees for owners of certificates of contingent interest issued under the Berry Agreement. Both said actions arise out of the Berry Agreement and are herein referred to jointly as "the Related Cases."
- §1.3 In the United States District Court for the Southern District of New York, a class action order was entered on February 2, 1972 in an action against CUC and others there pending, captioned Sherlee Land, et al., plaintiffs v. Commonwealth United Corporation, et al., defendants, Civil Action No. 69 Civ. 3726 ("the Land Action"), wherein said Court ordered that the Land Action be maintained as a class action for the benefit of all persons other than the defendants therein who at any time during the period commencing October 16, 1968, and ending August 1, 1969 acquired for value securities issued by CUC, including its common stock, its preferred stock, its debentures and its warrants, and who have sustained losses thereon as a result of wrongful acts and omissions of defendants therein ("the CUC Class"). Berry-Arkansas, the named plaintiffs in the O'Daniel action, and some or all of the persons in whose behalf said action is pleaded may be members of the CUC Class. Independent negotiations for settlement of the Land Action are presently being conducted, and if said action is settled, approval of the Court in which it is pending will be required.
- §1.4 Pursuant to a proxy statement dated February 7, 1972, CUC has held a meeting of its stockholders with respect to a "Plan of Settlement" set forth in said proxy statement, by which CUC proposes to settle a substantial portion of its outstanding obligations by primarily utilizing the consideration from the sale of the capital stock and certain indebtedness of its wholly-owned subsidiary The Seeburg Corporation of Delaware ("Seeburg") to Seeburg Industries Inc. ("Industries") pursuant to a "Purchase Agreement" dated as of January 1, 1972, a copy of which is set forth

in said proxy statement. Said sale is to be closed on a "Closing Date" determined as provided in the Purchase Agreement, but only if on or before the Closing Date all conditions necessary to consummate the Plan of Settlement have been satisfied. Pursuant to vote of the CUC shareholders, the outstanding common shares of CUC will be reverse split one for ten when the Plan of Settlement is consummated. The consummation of the Plan of Settlement by its terms is dependent upon various occurrences including the settlement of material litigation against CUC on terms similar to terms described in the Plan of Settlement, and judicial approval thereof to the extent required.

§1.5 The Parties (as defined in §2.3) have made this Stipulation of Settlement in order to effect settlement of the Berry Cases and the Related Cases as part of the consummation of the Plan of Settlement, but with suitable provision for effectuation of this settlement if the Plan of Settlement cannot be consummated. If approved by the Court pursuant to application under §4.1, settlement hereunder shall be effected by appropriate instruments to be delivered at a closing as provided in [3.1]. If the Court disapproves, this Stipulation of Settlement shall for all purposes become void. In such event, no right, claim, obligation or liability of any person shall arise or be affected by this Stipulation's having been negotiated, and nothing herein contained or done hereunder will be deemed an admission or concession by any Party or will be used by anyone for any adversary purpose.

PARTIES

- §2.1 The "Initiating Parties" to this Stipulation of Settlement are CUC, Berry-Delaware, the named plaintiffs in the O'Daniel action, Berry-Arkansas and Industries as purchaser under the Purchase Agreement.
- \$2.2 No class action order has yet been entered in the O'Daniel action. Nonetheless, for purposes of the settlement proposed under this Stipulation of Settlement, all persons who received shares of CUC pursuant to the Berry Agreement, Berry-Arkansas, the named plaintiffs in the O'Daniel action, the persons in whose behalf said action is pleaded, and the persons and corporations for whose benefit the Wilkins action is pending in the Arkansas Court, are recognized by the Initiating Parties as a class and are referred to herein as "the Berry Class." Prior to or in connection with application for judicial approval of this Stipulation of Settlement,

the Court will be asked to order that the O'Daniel action be maintained as a class action for the benefit of the Berry Class as defined above, that due notice be given to all members thereof, and that due opportunity be afforded to any member to exclude himself therefrom. If the Court fails to enter an order substantially to this effect, or if pursuant to such order any member of the Berry Class effectively excludes himself or itself from the Berry Class, then this Stipulation of Settlement may be voided by any of the Initiating Parties by written notice to the other Initiating Parties within ten (10) days from the date set by the Court as the last day on which any member of the Berry Class may exclude himself from said class.

§2.3 The term "Parties" refers to the Initiating Parties identified in §2.1 and the members of the Berry Class as it may be constituted by order of the Court conforming to §2.2.

THE SETTLEMENT FUND

- §3.1 To effect settlement hereunder, contributions shall be made to a "Settlement Fund" as follows:
 - (a) CUC shall make available for issuance 543,650 shares of its common stock or if issuance is effected after the one for ten reverse split, 54,365 such shares ("the Settlement Shares"), plus \$75,000 payable as provided in §5.2.
 - (b) Berry-Delaware shall contribute \$250,00 payable on closing. §3.2 The Settlement Fund shall be distributed as follows:
 - (a) All expenses of settlement hereunder, including all allowances by the Court for attorneys fees and disbursements to plaintiffs' counsel in the Berry Cases and Related Cases, and the expenses of the distribution of the Settlement Shares shall be paid out of the cash in the Settlement Fund.
 - (b) The Settlement Shares and any balance in the Settlement Fund shall be distributed as provided in §5.1.
- §3.3 In consideration for settlement of litigation hereunder, each Party shall:
 - (a) Waive and release any and all right of indemnity or contribution which he may have as against any other Party with respect to any expense or liability of any sort which he has incurred or may incur in the defense or settlement of the Berry Cases and the Related Cases or in any other action heretofore or hereafter brought with respect to any of the matters complained of in any of said cases.

- (b) Discontinue with prejudice and release all claims make in the Berry Cases and the Related Cases by each Party against any other Party.
- (c) Give a general release to CUC and each of its subsidiaries and to Berry-Delaware.
- (d) Surrender all right to participate as a member of the CUC Class in any settlement or judgment in favor of said class in the Land Action.
- §3.4 No person shall receive any distribution of Settlement Shares under this Stipulation of Settlement unless he shall first execute and deliver a sufficient release of CUC and Berry-Delaware of any and all claims and rights of action arising out of or relating to his acquisition, retention or sale of any stock or other security of CUC or of any present or former subsidiary thereof which he obtained pursuant to the terms of the Berry Agreement.

COURT APPROVAL

- §4.1 As soon as possible after the execution of this Stipulation of Settlement by the Initiating Parties, and subject to entry of a class order under §2.2, the undersigned counsel shall make application to the Court for approval under F.R.C.P. Rule 23 upon such notice to the members of the Berry Class as the Court may direct. If the settlement is approved, final judgments of this Court shall be entered dismissing the Berry Cases with prejudice.
- §4.2 Pending the making and final determination of the application for Court approval under §4.1 and of any appeal from such determination, any Party to this Stipulation of Settlement who has recovered or hereafter recovers any judgment, or who has pleaded or hereafter pleads in any action any cause of action seeking judgment on any claim against any Party as to which he is required to give a release under this Stipulation of Settlement, shall cease all efforts to enforce such judgment and to prosecute such cause of action. If approved by the Court, each Party shall execute and deliver at the closing appropriate papers to discharge each such judgment and discontinue and release each such cause of action with prejudice and without costs.
- §4.3 At the closing the Settlement Shares and the cash in the Settlement Fund will be paid and delivered to the First National Bank of

Magnolia, Arkansas, as Trustee (the "Bank") and shall be dispersed by the Bank as follows:

- (a) The Bank shall pay jointly to the firms of Keith, Clegg and Eckert and Lester and Shults all sums awarded by order of the court as fees to the counsel for the plaintiffs.
- (b) The fee of the Bank for acting as Trustee to distribute the Settlement Shares and the cash from the Settlement Fund and all expenses incurred by the Bank in acting as Trustee will be deducted from the cash in the Settlement Fund.
- (c) The balance of the cash in the Settlement Fund and the Settlement Shares will be distributed by the Bank to the persons who held Certificates of Contingent Interest issued by CUC pursuant to paragraph 5.05 of the Berry Agreement, pro rata to the interest of such person as evidenced by the Certificate of Contingent Interest previously held by him and surrendered to the Bank.

CLOSING

- §5.1 Settlement hereunder shall be closed as soon as practicable after an order of the Court giving approval as provided in §4.1 becomes final and non-appealable, or in the event of appeal from such order after such affirmances, discontinuance or dismissal of the appeal as may make such order final and no longer subject to appellate review.
- §5.2 If this settlement is closed on or after the Closing Date provided in the Purchase Agreement, the \$75,000 to be contributed to the Settlement Fund by CUC shall be paid in cash. If this settlement is closed earlier, said contribution shall be in the form of a negotiable note in the amount of \$75,000 made by CUC to the order of counsel for the plaintiffs herein. Payment of said note shall be guaranteed by Crystal Petroleum Company, parent of defendant Berry-Arkansas. Said note shall be first applied to any entitlement of counsel fees and disbursements under §3.2(a) and shall bear interest and be payable on such terms as shall make the note discountable by the guarantor's bank at face value. In all events principal and interest thereon shall be paid by CUC in full promptly and no later than fifteen (15) days after the Closing Date, and Industries guarantees CUC's obligation so to pay.
- §5.3 At the closing, certificates for shares of stock of CUC, without legend, shall be delivered, registered in such names and in such numbers

of shares as shall give effect to the decision of the Court upon the proposals of plaintiffs' counsel as to how to divide the Settlement Shares among members of the Berry Class pursuant to §4.3, provided that there shall then be effective registration statements under the Securities Act of 1933 as amended, covering the Settlement Shares or the Court shall determine that the Settlement Shares are exempt from registration thereunder Otherwise, one temporary, legended certificate for all the Settlement Shares shall be issued in the name of such person as the Court may designate to hold for the benefit of the persons entitled to participate in the distribution of Settlement Shares under said decision of the Court, which certificate shall be surrendered in exchange for definitive certificates as provided in the immediately preceding sentence when the proviso therein with respect to registration or exemption is satisfied. CUC shall use its best efforts to cause registration of such shares in connection with registration of other CUC shares pursuant to the Plan of Settlement, but shall not be required to file a separate registration for the Settlement Shares hereunder.

§5.4 At or prior to the closing, plaintiffs shall deliver instruments satisfactory to counsel for CUC and Berry-Delaware, dismissing the Related Cases with prejudice and without costs.

Dated: Magnolia, Arkansas August , 1972

Byand
KEITH, CLEGG and ECKERT
Attorneys for plaintiffs and the Berry class
SMITH, WILLIAMS, FRIDAY, ELDREDGE & CLARK
Ву
and
TOWNLEY, UPDIKE, CARTER & RODGERS
By Attorneys for defendant Commonwealth United Corporation

LESTER and SHULTS

ROSE, BARRON, NASH, WILLIAMSON, CARROLL & CLAY
Ву
and
BUTLER, BINION, RICE, COOK & KNAPP
By Attorneys for defendant Berry Petroleum Company
GOLENBOCK and BARELL
Attorneys for Seeburg Industries, Inc., as purchaser

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS EL DORADO DIVISION

Civil Action No. ED 71-C-15

J. E. O'DANIEL, YVONNE LAW and GERLAND R. PATTEN & CO., INC.,

Plaintiffs

v.

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation, Defendants

Civil Action No. ED 70-C-58

BERRY PETROLEUM COMPANY, an Arkansas Corporation,
Plaintiff

vs.

COMMONWEALTH UNITED CORPORATION, a Delaware corporation, and BERRY PETROLEUM COMPANY, a Delaware corporation, Defendants

ORDER

Now on this 26th day of July, 1972, there is presented to the Court the petition of the plaintiffs, J. E. O'Daniel, Yvonne Law and Gerland R. Patten & Co., Inc., for a determination by the Court pursuant to Rule 23 that the plaintiffs are entitled to maintain this action as a class action on behalf of all persons, their heirs, successors or assigns who acquired the common capital stock of Commonwealth United Corporation pursuant to the terms of a Plan and Agreement of Reorganization executed by Berry Petroleum Company, an Arkansas Corporation and Commonwealth United Corporation.

The Court finds:

1. The class consisting of all persons, their heirs, successors or assigns who acquired the common capital stock of Commonwealth United Corporation pursuant to the terms of the aforesaid Plan and Agreement of Reorganization are so numerous that the joinder of all members of the class is impractical;

- 2. There are questions of law and fact common to the class;
- 3. The claims or defenses of the plaintiffs as the representative parties of the class are typical of the claims or defenses of the class;
- 4. The plaintiffs as the representatives of the class will fairly and adequately protect the interest of the class;
- 5. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants who are the parties opposing the class;
- 6. An adjudication of the claims asserted by the plaintiff with respect to individual members of the class would as a practical matter be depositive of the interest of the other members not parties to the adjudication or would substantially impair or impede their ability to protect their interest;
- 7. The questions of law and fact common to members of the class predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

It is therefore by the Court ordered that this action be maintained by the plaintiffs as a class action on behalf of all persons, their heirs, successors or assigns who acquired the common capital stock of Commonwealth United Corporation pursuant to the terms of the Plan and Agreement of Reorganization entered into by Commonwealth United Corporation and Berry Petroleum Company, an Arkansas Corporation on August 20, 1970.

OREN HARRIS

United States District Judge

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSA EL DORADO DIVISION

Civil Action No. ED 71-C-15

J. E. O'DANIEL, YVONNE LAW and GERLAND R. PATTEN & CO., INC.,

Plaintiffs

V.

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation, Defendants

Civil Action No. ED 70-C-58

BERRY PETROLEUM COMPANY, an Arkansas Corporation,
Plaintiff

V.

COMMONWEALTH UNITED CORPORATION, a Delaware Corporation, and BERRY PETROLEUM COMPANY, a Delaware Corporation, Defendants

ORDER

On this 26th day of July, 1972, there is presented to the Court the Motion of the plaintiffs to approve the form of a written notice to be sent to each member of the class and to fix a time and date for a hearing on the approval of the Stipulation of Settlement and a time and date for a hearing on the Petition of the counsel for the plaintiffs for the allowance of attorney's fee.

IT IS BY THE COURT ORDERED that the form of the notice attached to the Motion to be sent to members of the class be and the same is hereby approved as the best notice practicable under the circumstances, which includes notice to all members who can be identified with reasonable effort, and the plaintiffs are directed to send such notice to each member of the class at the address of such member as maintained by the Trust Department of the First National Bank of Magnolia, Arkansas.

IT IS FURTHER ORDERED by the Court that a hearing on the Joint Motion For Approval of Stipulation of Settlement and the Petition

of the counsel for the plaintiffs for the allowance of attorney's fees be set at 10:00 a.m. on the 23rd day of August, 1972, in the court room in the Federal Building in El Dorado, Arkansas.

OREN HARRIS

United States District Judge

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 74-2588

BERRY PETROLEUM COMPANY, an Arkansas Corporation (dissolved), et al.,

Plaintiffs-Appellants,

- against -

ADAMS & PECK, et al.,

Defendants-Appellees.

CROSS-DESIGNATION OF PARTS OF RECORD FOR INCLUSION IN APPENDIX BY APPELLEES KLEINER BELL GROUP (FRAP 30(b)).

SIRS:

PLEASE TAKE NOTICE that Appellees Kleiner Bell Group of defendants designate the following additional parts of the record for inclusion in the Appendix:

- 1. Stipulation of Concurrence in Stipulation of Settlement, of Kleiner Bell Group of defendants (viz., Kleiner Bell & Co., Kleiner Bell & Co., Inc., Burt Kleiner, Lionel Bell, Ralph J. Shapiro, Martin S. Shapiro, Richard A. Freling, 140 Associates) dated May 26, 1972, in the Land-Jennings action.
- 2. Final order and judgment dismissing as against Kleiner Bell Group of defendants, filed November 29, 1972 in the Land-Jennings action.

PLEASE TAKE FURTHER NOTICE that Appellees Kleiner Bell Group of defendants concur in the pending motion of Co-defendant-Appellee Arthur Young & Company under FRAP 10(e) for an order inter alia directing that the record on appeal be supplemented by relevant papers and transcripts in the Seeburg-Commonwealth United Litigation, which

papers include those above designated, specifically applicable to Appellees Kleiner Bell Group of defendants.

Dated: New York, New York January 8, 1975

POMERANTZ, LEVY, HAUDEK & BLOCK

Ву.....

A Member of the Firm

Attorneys for Appellees Kleiner Bell Group of Defendants 295 Madison Avenue New York, New York 10017 Tel. No. (212) 532-4800

TO:

ALL ATTORNEYS OF RECORD

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

In re:

SEEBURG COMMONWEALTH UNITED LITIGATION

SHERLEE LAND, ROBERT R. JENNINGS, et al.,

Plaintiffs

- against -

COMMONWEALTH UNITLD CORPORATION, et al.,

Defendants

STIPULATION OF CONCURRENCE OF KLEINER BELL GROUP OF DEFENDANTS

- 1. This Stipulation of Concurrence is made in conjunction with the "Stipulation of Settlement" in the above captioned matters, dated May 26, 1972, by and between the Initiating Parties, as defined in §2.1 of the Stipulation of Settlement, and defendants Kleiner Bell & Co., Kleiner Bell & Co., Inc., Burt Kleiner, Lionel Bell, Ralph J. Shapiro, Martin S. Shapiro, Richard A. Freling and 140 Associates, parties defendant in Docket M-19-95, sometimes referred to as The Kleiner Bell defendants (each of whom is a "New Party").
- 2. Each New Party hereby agrees to become a Party to the Stipulation of Settlement on terms applicable to him as set forth in the Stipulation of Settlement and in this Stipulation of Concurrence.
- 3. Each New Party shall make the contribution required of him as a settling defendant under §3.4 of the Stipulation of Settlement, and said New Parties shall also pay an aggregate of \$125,000 to the Settlement Fund for which they shall be jointly and severally liable.
- 4. The Kleiner Bell Defendants have denied and continue to deny all allegations of culpability and liability on their part. They state that they are entering into this Stipulation solely in the interests of terminating time-consuming and costly litigation, without conceding fault or liability in any respect whatever.
- 5. The Kleiner Bell Defendants will be given, through their undersigned attorneys, not less than 30 days' written notice of the Closing Date

(on which date their contribution will be required), and thereafter will be advised in writing of any substantial adjournments thereof.

- 6. On the Closing Date, the Kleiner Bell Defendants will receive, in exchange for their contribution, releases in their favor, in form satisfactory to their undersigned attorneys, by defendant Commonwealth United Corporation of all claims asserted or which could have been assorted by it in the Land complaint. At the option of the Kleiner Bell Defendants, such releases will run in favor of the individual members of the partnerships among the Kleiner Bell Defendants (as distinguished from the partnership entities). Said releases will be without prejudice to claims and rights of action of Commonwealth United Corporation against Arthur Young & Co. and any other non-settling defendant, but nothing herein contained shall affect or impair CUC's obligation to the Kleiner Bell Defendants under §6.1 of the Stipulation of Settlement.
- 7. Defendant Commonwealth United Corporation will not procure or assist in procuring the voluntary dismissal as to of the action entitled Jack B. Crawford, et. al. v. Commonwealth United Corporation, et al., USDC, C.D. Calif., No. 70-1740-R (transferred to USDC, SDNY, under No. M-19-95), unless such action is concurrently dismissed on at least as favorable terms as against such of the Kleiner Bell Defendants as might then be defendants therein. If defendant Commonwealth United Corporation breaches this undertaking, it will be liable to the Kleiner Bell Defendants for all their subsequently incurred expenses of defending such action through counsel of their own choosing, regardless of the course or the outcome of said action as against the Kleiner Bell Defendants, whether by judgment, settlement or otherwise; and this liability will be in addition to any all other liability generally prescribed by law. It is contemplated that if a settlement is later arrived at with the plaintiffs in such action, it will not entail any further contribution from any of the Kleiner Bell Defendants.
 - 8. The Kleiner Bell Defendants will be bound by and have the benefit of all provisions of the aforementioned Stipulaiton of Settlement, except to the extent otherwise provided in this Stipulation of Concurrence.
 - 9. Any payment owing to the Kleiner Bell Defendants under §3.4(e) of the Stipulation of Settlement shall be made by the escrowee to such of

the Kleiner Bell Defendants as may be designated in writing for that purpose by their undersigned attorneys.

10. The Kleiner Bell Defendants acting through their undersigned counsel shall be deemed an Initiating Party for the purposes of the third sentence of §1.5 of the Stipulation of Settlement.

Dated: New York, New York May 26, 1972

/s/ Edward Nathan

CARROW, BERNSON, HOENIGER, FREITAG & ABBEY

By /s/ (Illegible)

A Member of the Firm General Counsel for Sherlee Land, et al., plaintiffs in *Land* suing derivatively in behalf of Commonwealth United Corporation

BERKOWITZ, LEFKOVITZ & PATRICK

By /s/ J. Vernon Patrick, Jr.

A Member of the Firm

KAUFMAN, TAYLOR, KIMMEL & MILLER

By /s/ Stanley F. Kaufman

A Member of the Firm General Counsel for Robert R. Jennings, et al., Plaintiffs in Land suing in behalf of the Commonwealth United Class

TOWNLEY, UPDIKE, CARTER & RODGERS

By /s/ William P. Henderson, Jr.

A Member of the Firm Attorneys for Commonwealth United Corporation, Defendant

GOLENBOCK & BARRELL

By /s/ Justin M. Golenbock

A Member of the Firm Attorneys for Seeburg Industries, Inc.

POMERANTZ LEVY HAUDEK & BLOCK

By /s/ (Illegible)

Attorneys for Defendants Kleiner Bell & Co., Kleiner, Bell & Co., Inc., Burt Kleiner, Lionel Bell, Ralph J. Shapiro, Martin S. Shapiro, Richard A. Freling and 140 Associates

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

SHERLEE LAND, ROBERT R. JENNINGS, HARRY J. MYERS, CARL KALASH, OLGA KALASH, SIDNEY ABBEY, MARY ABBEY, SHIRLEY GOLDMAN, MARTIN DE STEFANO, NANCY SPITALNIK, IRVING BAUM, SIMON ALTABET, STANLEY A. CHASE, SALVATORE DE FRESCO, KATHRYN FOX, THOMAS FOX, NORMAN GLASSEROW, JULIUS GLAZER, TAMARA GLAZER, MARCIA E. HERMAN, GEORGE HOROWITZ, JOHN HOROWITZ, HARRY JACOBS, HAROLD LANZNER, LOUIS MELTZER, JAMES ROSENFELD, SAUL E. SAPPER, CHARLES SCHNEIDER, BERNARD SEGAL, LOUIS SEGAL, LOUIS SINGER, MAX I. STAUB, JOHN SUB, GEORGE WALTHER, MARY JANE WEISS, CARL WEISS, BESSIE YABLON, CHARLES NEMAROW, JERRY FUSS, ERNEST J. GLOVER, HANNS BEYER, ALINE BEYER, BENJAMIN B. LEINOFF, LEINOFF PROFIT SHARING TRUST, JOSEPH GROSS, CHRISTIAN TEUCHTLER, BERTHA H. MEYERS and PHIL MEYERS,

Plaintiffs.

VS.

COMMONWEALTH UNITED CORPORATION, A BRUCE ROZET, OLIVER A. UNGER, IRVING GOLDSTEIN, SIDNEY KIBRICK, RICHARD A. SARAZEN, RODNEY W. LOEB, ARNE KALM, GOTTFRIED von MEYERN HOHENBERG, HOWARD D. MARTIN, PETER GETTINGER, KLEINER, BELL & CO., KLEINER, BELL & CO., INC., LOUIS J. NICASTRO, BURT KLEINER, LIONEL BELL, RALPH SHAPIRO, RICHARD A. FRELING, THEODORE R. SAYERS, PETER HUANG, BENJAMIN F. BRESLAUER, I.O.S., LTD. (S.A.), ARTHUR YOUNG & COMPANY and 140 ASSOCIATES,

Defendants.

FINAL ORDER AND JUDGMENT

On August 17, 1972 this Court made an order, among other things, setting a hearing on October 24, 1972 for the purpose of finally determining whether the proposed settlements as provided in the Stipulation of Settlement herein and related Stipulations of Concurrence, in conjunction with the Plan of Settlement in the prospectus of Seeburg Industries, Inc. dated June 30, 1972, are proper, fair, reasonable, just, equitable and adequate and should be finally approved by the Court, and, in the event such settlements be finally approved by the Court and consummated, whether the claims asserted herein against the settling defendants should be dismissed with prejudice and without costs and an appropriate judgment entered in accordance with the Stipulation of Settlement. The same order prescribed the notice of such hearing to be given to class members and stockholders of defendant Commonwealth United Corporation ("CUC"). The notice of the hearing thereby directed was duly given as shown by proofs thereof filed with the Court. At the hearing on October 24, 1972 it appeared that no one had served or filed any written objections to the settlements except for Jesse I. Krauss, The Landau Family Foundation, Bernard C. Segal (also acting on behalf of Louise Segal Block and Louis Singer), and Norman H. Zevitz.

After hearing all objectants requesting leave to be heard and taking proof at such hearing, the Court adjourned the hearing to November 28, 1972. By further adjournment the hearing was continued on November 29, 1972, at which time the Court took further proof and heard the attorneys for plaintiffs and settling defendants as to the fairness, reasonableness and adequacy of the proposed settlement.

The Court finds that Exchange Offers for outstanding CUC debentures, as referred to in the Plan of Settlement, have been accepted in sufficient amount, and that acceptance by judgment and other creditors of CUC of the ten cents on the dollar settlement offers set forth in § III (3) (e) of the Plan of Settlement, are sufficient, and consummation of the Plan of Settlement is feasible.

At said hearing the Court was advised that CUC proposes, and Seeburg Industries as purchaser agrees that conditions 4, 5 and 6 of the Plan of Settlement be modified so as to permit consummation of the Plan of Settlement notwithstanding lack of acceptance from holders of debentures in the face amount of \$3,957,000, that condition 2 thereof be modified to require waiver by the Banks of \$345,000 interest and 39,000 warrants and that condition 10 thereof be modified to require the purchaser of Seeburg to pay CUC an additional \$1,957,000 in cash and \$100,000 in said purchaser's debentures, and to forgive repayment of its \$350,000 advance to CUC and to assume up to \$1,300,000 additional expense in connection with the Plan of Settlement, and the Court found that said modifications of the Plan of Settlement are appropriate and in the best interests of CUC, its stockholders and the CUC class and that, upon

acceptance by I.O.S. within the intent of condition 2, all conditions of the Plan of Settlement will have been met if said Plan as modified is consummated on or before December 31, 1972.

WHEREFORE, it is finally ordered, adjudged and decreed as follows:

- 1. The Plan of Settlement, as modified in accordance with the findings above recited, and the Stipulation of Settlement, along with the separate Stipulations of Concurrence of the Kleiner Bell group of defendants, Louis J. Nicastro and Sidney Kibrick, are finally approved as proper, fair, reasonable, just, equitable and adequate, and all objections thereto are hereby overruled.
- 2. Count I of the Consolidated Second Amended Complaint (class claims) is severed from this action and continued as against defendant Arthur Young & Company. Count II of the Consolidated Second Amended Complaint (derivative claims) is severed and continued as against CUC (as nominal, beneficiary defendant), A. Bruce Rozet, Oliver A. Unger, Irving Goldstein, Richard A. Sarazen, Rodney W. Loeb, Arne Kalm, H. Igor Ansoff, Gottfried von Meyern Hohenberg, Howard D. Martin, Peter Gettinger, Theodore R. Sayers, Peter Huang, Benjamin F. Breslauer and I.O.S. Ltd. (S.A.).
- 3. This action and all actions consolidated therewith are dismissed as against defendants Kleiner, Bell & Co., Kleiner, Bell & Co., Inc., Burt Kleiner, Lionel Bell, Ralph J. Shapiro, Martin S. Shapiro, Richard A. Freling, 140 Associates, Louis J. Nicastro, Sidney Kibrick and CUC with prejudice and without costs, and the Court's prima facie findings and determinations in its order herein of August 17, 1972 are hereby made final, except that CUC is retained as a nominal defendant with regard to the severed claims of Count II (derivative claims) in the Consolidated Second Amended Complaint.
- 4. The affidavit of mailing and the proof of publication of the notice as previously directed by the Court have been duly filed and the form, content and method of notice are held to be sufficient and adequate notice as required by Rules 23 and 23.1, Federal Rules of Court Procedure.
- 5. The settling parties named in the preceding paragraph are directed to perform the Plan of Settlement as modified, the Stipulation of Settlement and the Stipulations of Concurrence, insofar as applicable to them, according to their terms.

- 6. The undersigned retains jurisdiction for all purposes necessary or appropriate for implementation and enforcement of the Plan of Settlement as modified, the Stipulation of Settlement and Stipulations of Concurrence, including (without limiting the generality of this reservation) all matters therein explicitly committed to the Court's jurisdiction for all purposes necessary or appropriate for administration of the settlement for the benefit of class members and for passing upon applications for allowances for legal and accounting services rendered in prosecuting and settling the consolidated actions and for expenses incurred in connection therewith. Any interested party may apply at the foot of this judgment, upon due notice to all other interested parties, for relief under this paragraph.
- 7. The Court hereby determines that there is no just reason for delay in the entry of this final judgment and accordingly directs that this final judgment be entered as, and be deemed, a final judgment in accordance with Rule 54 (b) of the Federal Rules of Civil Procedure.

The clerk is directed to enter the foregoing as a final judgment forthwith.

Dated: November 29, 1972

Frank H. McFadden

U.S.D.J.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 74-2588

BERRY PETROLEUM COMPANY, an Arkansas Corporation (dissolved), et al.,

Plaintiffs-Appellants,

- against -

ADAMS & PECK, et al.,

Defendants-Appellees.

CROSS-DESIGNATION OF PARTS OF RECORD FOR INCLUSION IN APPENDIX BY APPELLEE ALLEN & COMPANY INCORPORATED

SIRS:

PLEASE TAKE NOTICE that the Appellee Allen & Company Incorporated designates the following parts of the record for inclusion in the Appendix:

- 1. Summons and Complaint in an action in the United States District Court for the Eastern District of Missouri, Eastern Division, entitled: "Malcolm L. Strauss, Plaintiff v. Commonwealth United Corporation, Kleiner, Bell & Co., Incorporated, Burt Kleiner, Allen & Company Incorporated, Theodore R. Sayers, A. Bruce Rozert, Oliver A. Unger, Irving Goldstein, Peter Gettinger, H. Igor Ansoff, N. Clarkson Earl, Jr., Peter Huang and Gottfried Von Meyern-Hohenberg, Defendants" (hereinafter referred to as "Strauss v. Commonwealth").
- 2. Conditional Transfer Order of the Judicial Panel on Multi-District Litigation filed February 14, 1970 transferring Strauss v. Commonwealth to the Southern District of New York for pre-trial proceedings with Seeburg-Commonwealth Merger Litigation.
- 3. Stipulation of Dismissal of Strauss v. Commonwealth dated April 7, 1972 and Affidavit of Frank P. Broz sworn to May 10, 1972 filed with such Stipulation.
- 4. Stipulation of Concurrence in Stipulation of Settlement on behalf of Allen & Company Incorporated dated May 26, 1972.

PLEASE TAKE FURTHER NOTICE that the Appellee Alleu &

Company Incorporated concurs in the pending motion of defendant Appellee Arthur Young & Company under FRAP 10(e) for an order inter alia directing that the record on appeal be supplemented by relevant papers and transcripts in the Seeburg-Commonwealth United Litigation, and further concurs in the designation by the Kleiner Bell Group of defendants for further supplementing the record on appeal.

Dated: New York, New York January 9, 1975

HOLTZMANN, WISE & SHEPARD

By /s/ (Illegible)

Attorneys for Appellee Allen & Company Incorporated 30 Broad Street New York, N. Y. 10004 Tel. No. (212) 747-5514

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

Civil Action File No. 70C 580(2)

MALCOLM L. STRAUSS,

Plaintiff

V.

COMMONWEALTH UNITED CORPORATION, KLEINER, BELL & CO., INCORPORATED, BURT KLEINER, ALLEN & COMPANY, INCORPORATED, THEODORE R. SAYERS, A. BRUCE ROZET, OLIVER A. UNGER, IRVING GOLDSTEIN, PETER GETTINGER, H. IGOR ANSOFF, N. CLARKSON EARL, JR., PETER HUANG and GOTTFRIED VON MEYERN-HOHENBERG, Defendants

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Lewis R. Mills and Bernard W. Weitzman, plaintiff's attorneys, whose address is 721 Olive Street, Suite 1201, St. Louis, Missouri, 63101, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ Leo C. DeVoto, Jr.

Clerk of Court

/s/ Annie W. Kinder

Deputy Clerk
[Seal of Court]

Date: November 13, 1970

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

Civ. No. 70C 580(2)

MALCOLM L. STRAUSS,

Plaintiff,

V.

COMMONWEALTH UNITED CORPORATION, KLEINER, BELL & CO., INCORPORATED, BURT KLEINER, ALLEN & COMPANY, INCORPORATED, THEODORE R. SAYERS, A. BRUCE ROZET, OLIVER A. UNGER, IRVING GOLDSTEIN, PETER GETTINGER, H. IGOR ANSOFF, N. CLARKSON EARL, JR., PETER HUANG, GOTTFRIED VON MEYERN-HOHENBERG, Defendants.

COMPLAINT

Comes now the plaintiff by and through his attorneys, and for his Complaint against these defendants alleges as follows:

- 1. This action arises under Section 11 of the Securities Act of 1933 (15 U.S.C. Section 77k), Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78j) and Rule 10b-5 of the United States Securities and Exchange Commission (17 C.F.R. 240.10b-5), as hereinafter more fully appears. This Court has jurisdiction under Section 22 of the Securities Act of 1933 (15 U.S.C. Section 77v), Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78aa), and Section 1337 of Title 28 of the United States Code (28 U.S.C. Section 1337).
- 2. At all times hereinafter mentioned, plaintiff was a resident of the State of Missouri and, on and prior to November 18, 1968, plaintiff was the owner of 100 shares of the common stock of The Seeburg Corporation (hereinafter Seeburg).
- 3. Defendant Commonwealth United Corporation (hereinafter Commonwealth) is a Delaware Corporation with its principal place of business in California. It is the issuer of the securities registered with the United States Securities and Exchange Commission pursuant to Registration Statement No. 2-30223, said registration statement becoming effective on or about October 16, 1968. These securities included shares of its \$1.05 convertible preferred stock, common stock purchase warrants, and common stock.

- 4. A copy of the prospectus contained in and forming a part of that registration statement was mailed to the plaintiff and to other owners of shares of the common stock of Seeburg. The plaintiff received his copy of that prospectus at his residence in the City of Ladue, St. Louis County, Missouri. By that prospectus the defendant Commonwealth offered to exchange one share of its convertible preferred stock and one warrant to purchase one share of its common stock for each outstanding share of the common stock of Seeburg. Pursuant to the terms of that offer, the plaintiff tendered his shares of the common stock of Seeburg to the defendant Commonwealth. On or about November 18, 1968, the defendant Commonwealth accepted the plaintiff's tender and that of many other owners of the common stock of Seeburg. Thereafter, the defendant Commonwealth issued its convertible preferred stock and warrants to purchase its common stock to the plaintiff and to others who had tendered shares of the common stock of Seeburg to it. The defendant Commonwealth mailed certificates for such securities to plaintiff at his residence in Missouri.
 - 5. The value of the common stock of Seeburg on November 18, 1968, was approximately \$41.00 per share. The defendant Commonwealth acquired approximately 1,974,205 shares of that common stock on November 18, 1968, pursuant to the exchange offer. The aggregate value of the shares so acquired was approximately \$80,942,405. At the time this action is brought, both the convertible preferred stock and the warrants to purchase the common stock of the defendant Commonwealth are valueless. The plaintiff still owns the convertible preferred stock and the warrants issued to him by the defendant Commonwealth in exchange for his shares of the common stock of Seeburg.
 - 6. The prospectus that was part of the registration statement when it became effective and when it was delivered to plaintiff, misstated material facts and omitted to state material facts required to be stated therein and necessary to make the statements therein not misleading.
 - (a) The prospectus failed to disclose that the defendant Burt Kleiner, a principal of the defendant Kleiner, Bell & Co., Incorporated, had guaranteed indebtedness to the extent of \$125,000.00 for the defendant Irving Goldstein (hereinafter Goldstein) in 1968. It failed to disclose that the defendant Burt Kleiner had also guaranteed indebtedness

for the defendant A. Bruce Rozet (hereinfater Rozet) in the amount of \$175,000.00 in 1968, and that the defendants Goldstein and Rozet had used the proceeds of such indebtedness to acquire substantial interests in the defendant Commonwealth.

- (b) The prospectus failed to disclose that the defendant Commonwealth paid a fee of \$120,000.00 to the defendant Kleiner, Bell & Co., Incorporated in August, 1968.
- (c) The prospectus failed to disclose that in January, 1968, following the acquisition of Sunset International Petroleum Corporation (hereinafter Sunset) by the defendant Commonwealth, said Commonwealth exchanged its securities for certain debentures theretofore issued by Sunset to defendant Kleiner, Bell & Co., Incorporated and certain of its clients, and that Sunset may not have been able to satisfy in full its obligations under such debentures.
- (d) The prospectus failed to disclose the role of the defendant, Kleiner, Bell & Co., Incorporated in the sale of certain participating units of Sunset's exploration programs.
- (e) The prospectus states that the defendant Rozet had entered into a five-year employment contract with the defendant Commonwealth in January, 1968, calling for an annual salary of \$60,000. The prospectus fails to disclose that the defendant Commonwealth and the defendant Rozet planned to double his salary and extend his employment contract to seven (7) years in November, 1968. The prospectus states that the defendant Goldstein had entered into a five-year employment contract with the defendant Commonwealth in January, 1968, calling for an annual salary of \$45,000.00. The prospectus fails to disclose that the defendant Commonwealth and the defendant Goldstein planned to increase his salary and extend his employment contract in November, 1968.
- 7. In deciding to accept the offer of the defendant Commonwealth made by the prospectus described above, the plaintiff was influenced by and relied upon the statements made in the prospectus.
- 8. Plaintiff brings this action on behalf of himself and also on behalf of all past shareholders of Seeburg who accepted the offer made by the defendant Commonwealth in the prospectus described above. This class action is proper because: (a) the class of such shareholders is so numerous

that joinder of all of them is impracticable; (b) there are questions of law and fact common to the class; (c) the claims of the plaintiff are typical of the claims of the class; and (d) the plaintiff will fairly and adequately protect the interests of the class. In addition, the questions of law and fact common to the members of the class predominant over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

- 9. The Plaintiff did not discover, and in the exercise of reasonable diligence he should not have discovered, the omissions in the prospectus and the misleading character of that prospectus more than one year prior to the bringing of this action.
- 10. Defendant Allen & Company, Incorporated (hereinafter Allen) and defendant Kleiner, Bell & Co., Incorporated, participated in the offering and sale of the securities offered pursuant to the above described registration statement, and were underwriters of that offering as that term is defined in Section 2 (11) of the Securities Act of 1933 (15 U.S.C. Section 77 (b) (11)). Defendant Burt Kleiner also participated in that offering and sale; in addition, he controlled defendant Kleiner, Bell & Co., Incorporated and is liable under Section 15 of the Securities Act of 1933 (15 U.S.C. Section 77 (n)) and Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78 (t)).
- 11. Defendants Theodore R. Sayers (hereinafter Sayers), Rozet, Oliver A. Unger (hereinafter Unger), Goldstein, Peter Gettinger (hereinafter Gettinger), H. Igor Ansoff (hereinafter Ansoff), N. Clarkson Earl, Jr. (hereinafter Earl), Peter Huang (hereinafter Huang), and Gottfried von Metern-Hohenberg (hereinafter Hohenberg) were directors of defendant Commonwealth at the time of the filing of the registration statement and the amendments thereto and at the time of the offering and sale; all of them controlled defendant Commonwealth; and all of them except the defendant Earl signed the registration statement and/or one or more of the amendments to the registration statement.

WHEREFORE, the plaintiff prays this Court to enter its judgment jointly and severally against all defendants as follows:

(1) in favor of the plaintiff for Four Thousand One Hundred Dollars (\$4,100.00) and for interest on that amount from November 18, 1968;

- (2) in favor of all other persons who exchanged shares of the common stock of Seeburg for securities of the defendant Commonwealth as described above and who still own those securities, in the amount of Forty-One Dollars (\$41.00) per share for each share of the common stock of Seeburg so exchanged and for interest thereon from November 18, 1968;
- (3) in favor of all persons who exchanged shares of the common stock of Seeburg for securities of the defendant Commonwealth as described above and who disposed of those securities before this suit was brought, in the amount of Forty-One Dollars (\$41.00) per share for each share of the common stock of Seeburg so exchanged less the price received by them for such securities, and for interest thereon.

The plaintiff also prays for costs of this action, including reasonable attorneys thes and for such other relief as may be appropriate.

/s/ Lewis R. Mills

/s/ Bernard W. Weitzman

Attorneys for Plaintiff
721 Olive Street, Suite 1201
St. Louis, Missouri 63101
241-5620

DOCKET NO. 37A COMMONWEALTH CASE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Re: Multidistrict Litigation Resulting From the Seeburg-Commonwealth United Merger

Malcolm L. Strauss v. Commonwealth United Corporation, et al, E. D. Missouri (E. Div.), Civil Action No. 70C 580(2)

CONDITIONAL TRANSFER ORDER

On May 4, 1970, after notice and hearing, the Panel transferred six actions to the United States District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, 3 tag-along cases have also been transferred to the Southern District of New York for coordinated or consolidated pretrial proceedings. With the consent of that court, all such actions have been assigned to Honorable Frank H. McFadden.

It appears from the pleadings filed in this action that it involved questions of fact which are common to the actions previously transferred to the Southern District of New York and assigned to Judge McFadden.

Pursuant to Rule 12 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation the above-captioned tag-along case is hereby transferred under 28 U.S.C. §1407 to the Southern District of New York on the basis of the hearing held on February 27, 1970 and for the reasons stated in the Opinion and Order of May 4, 1970 (312 F. Supp. 909), and, with the consent of that court, assigned to the Honorable Frank H. McFadden.

This order does not become effective until it is filed in the office of the Clerk of the United States District Court for the Southern District of New York. The transmittal of this order to said Clerk for filing shall be stayed fifteen-days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

/s/ Patricia D. Howard

Clerk of the Panel

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 Civil Action File No. 70C 580(2)

in re SEEBURG-COMMONWEALTH UNITED LITIGATION UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

MALCOLM L. STRAUSS,

Plaintiff,

— against —

COMMONWEALTH UNITED CORPORATION, et al.,
Defendants.

STATE OF NEW YORK) SS.

FRANK P. BROZ, being duly sworn, deposes and says:

I am an attorney and counselor at law and a member of the firm of Holtzmann, Wise & Shepard, with offices at 30 Broad Street, New York, N. Y.

My firm acted as attorneys for Allen & Company, Inc., one of the defendants herein.

This action, when originally brought, contained an allegation to the effect that it was a class action. The action was transferred for pre-trial proceedings to the Southern District of New York, pursuant to an order of the Judicial Panel on Multidistrict Litigation.

By an order made in such multidistrict litigation the allegations in the complaint in this action, alleging that it was a class action, were stricken, and it thereafter ceased to be a class action.

I have examined the original docket sheets in the office of the Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, and find that the complaint was served only on the following defendants:

Commonwealth United Corporation Kleiner, Bell & Co. Incorporated Burt Kleiner Allen & Company, Incorporated

Appearances were noted on behalf of such defendants.

The docket contains the following additional entry:

"Marshal's returns on summons/complaint non est as to Theo R. Sayers, A. Bruce Rozet, Oliver A. Unger, Irving Goldstein, Peter Gettinger, H. Igor Ansoff, N. Clarkson Earl, Jr., Peter Huang & Gottfried Von Meyern-Hohenberg, filed."

A copy of such docket sheets is annexed hereto marked Exhibit A.

Pursuant to the Federal Rules of Civil Procedure, the only persons on whose behalf a stipulation of discontinuance is required, are the plaintiff and the defendants, Commonwealth United Corporation, Kleiner, Bell & Co., Incorporated, Burt Kleiner and Allen & Company, Incorporated.

A stipulation signed on behalf of all such parties is being filed herewith.

By /s/ (Illegible)

Sworn to before me this 10th day of May, 1972.

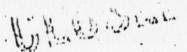
/s/ Irving S. K. Chin

Notary Public, State of New York No. 31-5685925 Qualified in New York County Commission Expires March 30, 1974

CIVIL DUCKET

UNITED STATES DISTRICT . URT

D. C. Form No. 104 Her.



70C 58C(2

Jury demand date:

ATTORNEYS TITLE OF CASE For plaintiff: Lewis R Mills and Bernard W Wei MALCOLM L. STRAUSS 721 Olive St., Suite 1201 St. L, Mo. 63101 a common stockholder ST 19 Dec VS. De For defendant: Bryan, Cave, McPheeters & McRo De COMMONWEALTH UNITED CORPORATION KLEINER, BELL & CO, INCORPORATED for Allen & Co., Inc. BURT KLEINER ALLEN & COMPANY, INCORPORATED Robert B Block, Pomerantz, Levy, Haudek & Block, 295 Madison Ave, NY, NY 10017 THEODORE R SAYERS / A. BRUCE ROZET LOCAL COUNSEL - Thomas J.
Guilfoil, 818 Olive, Suite 434
St. Louis, Mo. 63101 CH 1-6090 OLIVER A UNGER IRVING GOLDSTEIN PETER_GETTINGER_ H. IGOR ANSOFF Lewis, Rice, Tucker, Allen Chubb 611 Olive St., St. L. Suite 1555 (for Commonwealth United Corp) N. CLARKSON EARL, JR PETER HUANG GOTTFRIED VON MEYERN - HOHENBERG NAME OR DI COSTS RECEIPT NO. STATISTICAL RECORD 15 27 11-137 Clerk J.S. 5 mailed Marshal J.S. 6 mailed Basis of Action: Securities Docket fee Exchange Act, Sec 22 statements of material factsWitness fees the prospectus) Depositions Action arose at: A-242

Е	vs commonwealth united corp - et al PROCEEDINGS	Judgment 1
0	Complaint filed and summons issued.	1
14	By leave, Bryan, Cave, McPheeters & McRoberts enter their appearance for deft. Allen & Co., Inc., and said deft. granted to Jan. 13, 1971, to plead.	
. 15	By leave, Robert B. Block, Pomerantz, Levy, Haudek & Block and Thomas J Guilfoil, Guilfoil, Symington & Petzall enter their appear as attys for defts Kleiner, Bell & Co., Inc & Burt Kleiner. Said d granted to and including Feb 7, 1971 to plead in memo, filed.	+
. 15	Marchal's return to service of Summons & Complaint executed on Commonwealth Unit Corporation by serving Mrs. Monique Vagielnik, Secy. on 11-30-70. filed. Morshal's return to service of Summons & Complaint executed on Kleiner, Tell & Complaint executed on Kleiner, Tell & Complaint executed on Kleiner, Tell & Complaint executed on Kleiner, Tell & Complaint on Part Kleiner, 262 H. The Neverly Dr., Peverly Hills, Calif on 12-7-70. filed. Marshal's return to service of Summons & Complaint on Part Kleiner, 262 H. Fever Dr., Beverly Hill, Calif. on 12-7-70, filed. Mershal's return to service of Summons & Complaint executed on Allen & Company, Inc. by serving Milton Filene, V. Pres., on 11-24-70, filed.	
. 21	Lev.s, Rice, Tucker, Allen & Chubb and Robt. S. Allen enter their appearance as attys. for deft. Commonwealth United Corp., an on application, said deft. granted 30 days additional time in whito plead.	d ch
71	a watidistrict Titigation	
1 5	Copy of Order of Judicial Panel of Multidistrict Litigation transferring case to the Southern District of New York for co-ordinated or consolidated pre-trial proceedings, pursuant to Title 25, USC, Sec. 1407, received and filed. Pursuant to said Order copies of all file pleadings and copy Clerk's docket entries in cause, transmitted to clerk of aforesaid Court. Notices mailed to attorneys of record.	of
у 19	for an authors (complaint non est as to Theo R	ried
	A-243	

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

Civil Action File No. 70C 580(2)

MALCOLM L. STRAUSS,

Plaintiff,

- against -

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants.

STIPULATION OF DISMISSAL

IT IS STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that this action be and the same hereby is dismissed with prejudice and without costs.

Dated this 7th day of April, 1972.

LEWIS R. MILLS and BERNARD W. WEITZMAN By /s/ Bernard W. Weitzman

Attorneys for Plaintiff

LEWIS, RICE, TUCKER, ALLEN & CHUBB and TOWNLEY, UPDIKE, CARTER & RODGERS By /s/ (Illegible)

Attorneys for Comonwealth United Corporation

POMERANTZ, LEVY, HAUDEK BLOCK and THOMAS J. GUILFOIL

By /s/ (Illegible)

Attorneys for Defendants Kleiner, Bell & Co., Incorporated and Burt Kleiner

BRYAN, CAVE, McPHEETERS & McROBERTS and HOLTZMANN, WISE & SHEPARD By /s/ (Illegible)

Attorneys for Allen & Company, Inc.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No. M-19-95 69 Civ. 3726

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION

SHERLEE LAND, ROBERT R. JENNINGS, et al.,

Plaintiffs

- against -

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants

STIPULATION OF CONCURRENCE

- 1. This Stipulation of Concurrence is made in conjunction with the "Stipulation of Settlement" in the above captioned matters, dated May 26, 1972, by and between the Initiating Parties, as defined in §2.1 of the Stipulation of Settlement, and Allen & Company Incorporated ("the New Party").
- 2. The New Party hereby agrees to become a Party to the Stipulation of Settlement on terms applicable to it as set forth in the Stipulation of Settlement and in this Stipulation of Concurrence.
- 3. The New Party shall make the contributions required of it as a settling Party under the Stipulation of Settlement, and also shall contribute \$150,000 to the Settlement Fund.
- 4. There shall be excluded from the release to be given by the New Party under §3.4 of the Stipulation of Settlement the rights to compensation for services in connection with the Plan of Settlement referred to in the CUC proxy statement of February 7, 1972, and all contracts and rights thereunder of the New Party or any of its subsidiaries arising in connection with the Plan of Settlement or the Purchase Agreement.

Dated: New York, New York May 26, 1972

HOLTZMANN, WISE & SHEPARD

By /s/ (Illegible)

Attorneys for the New Party

EDWARD NATHAN and CARROW, BERNSON, HOENIGER, FREITAG & ABBEY

By /s/ Edward Nathan

General Counsel for Sherlee Land, et al., plaintiffs in *Land* suing derivatively in behalf of Commonwealth United Corporation

BERKOWITZ, LEFKOVITS & PATRICK and KAUFMAN, TAYLOR KIMMEL & MILLER

By /s/ Stanley F. Kaufman

General Counsel for Robert R. Jennings, et al., plaintiffs in *Land* suing in behalf of the Commonwealth United Corporation Class

TOWNLEY, UPDIKE, CARTER & RODGERS

By /s/ (Illegible)

Attorneys for Commonwealth United Corporation, defendant

GOLENBOCK and BARELL

By /s/ Justin M. Golenbock

Attorneys for Seeburg Industries, Inc.

